

1 STATE OF MINNESOTA DISTRICT COURT
2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
3 - - - - -
4 The State of Minnesota,
5 by Hubert H. Humphrey, III,
6 its attorney general,
7 and
8 Blue Cross and Blue Shield
9 of Minnesota,
10 Plaintiffs,
11 vs. File No. C1-94-8565
12 Philip Morris Incorporated, R.J.
13 Reynolds Tobacco Company, Brown
14 & Williamson Tobacco Corporation,
15 B.A.T. Industries P.L.C., Lorillard
16 Tobacco Company, The American
17 Tobacco Company, Liggett Group, Inc.,
18 The Council for Tobacco Research-U.S.A.,
19 Inc., and The Tobacco Institute, Inc.,
20 Defendants.
21 - - - - -

22 TRANSCRIPT OF PROCEEDINGS
23 VOLUME 35, PAGES 6910 - 7085
24 MARCH 9, 1998
25

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DIRECT EXAMINATION - CHERYL L. PERRY

1 P R O C E E D I N G S.
2 THE CLERK: All rise. Ramsey County
3 District Court is again in session, the Honorable
4 Kenneth J. Fitzpatrick now presiding.
5 (Jury enters the courtroom.)
6 THE CLERK: Please be seated.
7 THE COURT: Good morning.
8 (Collective "Good morning.")
9 MS. WALBURN: Thank you Your Honor.
10 THE COURT: Counsel. Stand up, please.
11 (Witness sworn.)
12 THE CLERK: Please state your name and
13 spell your last name.
14 THE WITNESS: Cheryl L. Perry, P-e-r-r-y.
15 THE CLERK: Thank you. Please have a seat.
16 CHERYL L. PERRY
17 called as a witness, being first duly
18 sworn, was examined and testified as
19 follows:

DIRECT EXAMINATION (cont'd)

20
21 BY MS. WALBURN:
22 Q. Good morning, Professor Perry.
23 A. Good morning.
24 Q. As you know, I'm Roberta Walburn, representing
25 the state of Minnesota and Blue Cross and Blue Shield

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1 of Minnesota.
2 A. Yes.
3 MS. WALBURN: Good morning, ladies and

4 gentlemen.
5 (Collective "Good morning.")
6 Q. When we broke on Friday, you were beginning to
7 discuss statistics on the onset of smoking, and you
8 had referenced Exhibit 26065, which is the National
9 Household Survey on Drug Abuse published by the U.S.
10 Department of Health and Human Services.
11 Using the information and data in that report,
12 how many people in the United States tried their
13 first cigarette in 1994?
14 A. Three million people tried their first cigarette
15 in 1994.
16 Q. How many of those three million people were
17 under the age of 18 years old?
18 A. Two and a half million of those three million
19 were under the age of 18.
20 Q. And those statistics relate to trying the first
21 cigarette for the first time; is that correct?
22 A. Yes. It's when they reported trying their first
23 cigarette.
24 Q. How, if at all, does trying the first cigarette
25 relate to regular smoking?

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1 A. Well we found in the Surgeon General's report
2 that among those who tried cigarettes, two out of
3 three became daily smokers at some time in their
4 lives. So about two out of three who tried a
5 cigarette became daily smokers at some point in their
6 lives.
7 Q. Is there also research on the age at which
8 people generally begin to smoke?
9 A. Yes, there is.
10 MS. WALBURN: Might I approach, Your Honor?
11 THE COURT: Yes.
12 Q. Showing you what has been marked as Exhibit
13 30233, is this a chart prepared at your direction?
14 A. Yes, it is.
15 Q. And what is the source of data in this chart?
16 A. The National Household Survey on Drug Abuse,
17 again from 1994 and 1995.
18 Q. And this chart illustrates the cumulative age of
19 starting to smoke?
20 A. Yes, it does.
21 Q. Would this be helpful in illustrating your
22 testimony?
23 A. Yes, it would be.
24 MS. WALBURN: Your Honor, we would offer
25 this for illustrative purposes.

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1 MR. WEBER: No objection, Your Honor.
2 THE COURT: Court will receive 30233.
3 BY MS. WALBURN:
4 Q. And with the court's permission, professor,
5 could you come down and explain this chart for the
6 jury.
7 THE COURT: For illustrative purposes.
8 MS. WALBURN: Yes.

9 A. This is a chart showing when people start to
10 smoke; that is, when they first try their first
11 cigarette. And what I did was divide up the chart
12 into 12 years old up to -- 12 years old, 14 years
13 old, 16 years old, 18 years old, 21 years old, and
14 then adults. And what the chart says is that 11.5
15 percent of people who ever smoke do so before age 12,
16 then 23 percent of people begin to smoke between age
17 12 and before age 14, so altogether, 34.5 percent
18 start to smoke before age 14; 60.2 percent start to
19 smoke before age 16; 81.9 percent start to smoke
20 before age 18; and 94.5 percent start to smoke before
21 age 21; only 5.5 percent of people start to smoke as
22 adults.
23 Q. Using that chart, Professor Perry, can you tell
24 us what grade level at school the various ages would
25 represent.

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1 A. This is about sixth grade, this is about eighth
2 grade, this is about 10th grade, and this is about
3 12th grade.
4 Q. And what would be the main point that you take
5 from this data?
6 A. Well the main point is that if someone doesn't
7 start smoking by age 18, the overwhelming majority
8 will not start smoking at all.
9 Q. Professor, are you also familiar with historical
10 trends in teen-age smoking?
11 A. Yes, I am.
12 Q. Showing you what has been marked as Exhibit
13 30243, is this another chart prepared at your
14 direction?
15 A. Yes, it was.
16 Q. And is this data reliable?
17 A. Yes, it's from the National Health Interview
18 Survey and the Monitoring the Future project from the
19 University of Michigan.
20 Q. Would this be helpful in illustrating your
21 testimony?
22 A. I believe it would be.

23 MS. WALBURN: Your Honor, we offer Exhibit
24 30243 for illustrative purposes.

25 MR. WEBER: No objection, Your Honor.

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1 THE COURT: Court will receive 30 -- 30243
2 for illustrative purposes.
3 BY MS. WALBURN:
4 Q. Professor Perry, could you explain this chart to
5 the court and the jury, please.
6 A. Yes. What I've shown here is the percentage of
7 17-year-olds who smoked between 1904 and
8 1984 -- (clearing throat) excuse me -- and this data
9 comes from the National Health Interview Survey,
10 that's from the National Center for Health
11 Statistics. So this is the percentage of
12 17-year-olds who smoked during those periods of time.
13 Unfortunately, those surveys didn't continue,

14 and so what I used from 1984 to 1996 are data from
15 the Monitoring the Future project on high school
16 seniors. Those include 18-year-olds. So that's why
17 the data are -- there's a little disjunction there,
18 little bit higher, because these are 17-year-olds and
19 these are 18-year-olds.

20 Now what does this chart tell us? First let's
21 start with females. At the beginning of the century
22 only 1.3 percent of 17-year-old females smoked, 1.3
23 percent. You can see there was a sharp increase
24 in -- starting in about the 1950's, and that kept
25 going until about the time of the first Surgeon

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1 General's report around, you know, late '50s, early
2 '60s, it leveled off. Then you can see another very,
3 very sharp increase among 17-year-old females in the
4 late '60s and early '70s. That leveled off, declined
5 a little, but they were then -- females were then
6 smoking at a rate that was higher than males
7 throughout the 80's. We then see another increase in
8 the 1990s among females.

9 Among males, the blue line, the males started
10 off the century, about 23.7 percent of 17-year-olds
11 were current smokers. They increased also until
12 about the late '40s, then we can see that they
13 declined, leveled off a bit right around the time of
14 the first Surgeon General's report, continued to
15 decline, leveled in the '80s, and then also there was
16 a sharp increase in the 1990s. So that's kind of the
17 story of the century for 17- and -- 17- and
18 18-year-olds, males' and females' smoking rates.

19 Q. And currently what percent of high school
20 seniors smoke?

21 A. Well as you can see, about a third of our high
22 school seniors are current smokers.

23 Q. How, if at all, does this data on smoking among
24 our teen-agers and high school seniors differ from
25 smoking among adults?

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1 A. Well I looked at data from the National Health
2 Interview Survey, again, and I looked at 30-year-olds
3 and 40-year-olds, and what we see is that there are
4 no significant increases at all among -- (clearing
5 throat) excuse me -- among adults since the time of
6 the first Surgeon General's report. So there was no
7 large increase, for example, here in the late -- late
8 '60s.

9 Q. Turning from the national picture to the state
10 of Minnesota, are you familiar with data on smoking
11 trends among teen-agers in Minnesota?

12 A. Yes, I am.

13 Q. And can you generally describe how that compares
14 with the national trends.

15 A. Well, in Minnesota we have data from the '80s
16 and the '90s, and our data in Minnesota follows the
17 same -- almost the same exact trend as the national
18 data. We had --

19 We were pretty flat, no increases much in the
20 1980s, so it was pretty flat, and then a large
21 increase in the 1990s. The only difference in our
22 data is that Minnesota adolescents, 12th graders,
23 tend to smoke about two to three percent less than
24 average, so I kind of consider them above average.
25 So that's kind of -- the Minnesota data follows
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1 pretty much the same trends.
2 Q. Thank you, professor. You can return to the
3 stand.
4 Has there also been research on teens who smoke
5 and whether they would like to quit smoking or
6 whether they have tried to quit smoking?
7 A. Yes, there's some data on teens and quitting.
8 Q. Can you turn in book two to Exhibit 26068. Is
9 this an exhibit which you prepared?
10 A. Yes, it is.
11 Q. And where did you obtain the information for
12 this exhibit?
13 A. This came from the Teen-age Attitudes and
14 Practices Survey, which is run from the Centers for
15 Disease Control.
16 Q. And are those reliable authorities?
17 A. Yes, they are.
18 MS. WALBURN: Your Honor, we would offer
19 Exhibit 26068 for illustrative purposes.
20 MR. WEBER: No objection, Your Honor.
21 THE COURT: Court will receive 26068 for
22 illustrative purposes.
23 BY MS. WALBURN:
24 Q. Could you please explain this chart.
25 A. Yes. In this survey, teen-agers -- in this case
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1 ages 12 to 18 -- who were smokers were asked about
2 their interest in quitting smoking. Seventy-four
3 percent reported that they had seriously thought
4 about quitting smoking, 64 percent or nearly two
5 thirds had tried to quit smoking -- (clearing
6 throat) -- at some -- (clearing throat) sorry -- at
7 some time, and about 49 percent had tried to quit in
8 the previous six months.
9 Q. And what is the significance of these
10 statistics?
11 A. Well it shows that even among teen-agers,
12 they're already interested, they've been thinking
13 about quitting, and about half have already tried to
14 quit at some time.
15 Q. Is there information in the 1994 Surgeon
16 General's report on how smoking in high school
17 relates to smoking later on in life?
18 A. Yes. We looked at high school seniors and we
19 looked at those who had smoked at least one cigarette
20 per day, so they were daily smokers, at least one
21 cigarette per day, and we found that among those
22 daily smokers, four out of five were still smoking
23 five or six years later when they were resurveyed.

24 So 80 percent of those who were smoking at least one
25 cigarette per day as high school seniors were still
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1 smoking five or six years later.

2 Q. And what is the significance of that
3 information?

4 A. Well that says that if you're smoking at least
5 one cigarette per day when you're a high school
6 senior, it's highly likely you're going to be smoking
7 as an adult.

8 Q. Did you find that the subject of the age at
9 which youth begin to smoke was discussed in the
10 internal tobacco company documents which you have
11 reviewed in this case?

12 A. Yes, it was. The tobacco companies tracked
13 youth smoking data for -- really for decades.

14 Q. And what sources of information from your review
15 of those documents did the tobacco companies use in
16 tracking youth smoking?

17 A. They used both government data, such as what
18 I've been presenting to you, but they also had their
19 own internal data-collection systems.

20 Q. Based on your review of tobacco company
21 documents, what significance, if any, did the tobacco
22 companies place on smokers under age 18?

23 A. The tobacco companies viewed smokers under age
24 18 as what they called replacement smokers, that
25 without them, their market would die.

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1 Q. And from your review of the company documents
2 and research you have done in this field, what is
3 meant by the term "replacement smokers?" How do you
4 use that term?

5 A. Replacement smokers are the new smokers to
6 replace those who quit or who die. Or smokers at the
7 other end who have been smokers who quit or die,
8 those are the ones to replace them.

9 Q. Could you turn in book one to Exhibit 12452 and
10 12453. These are companion documents. Exhibit 12452
11 is an RJR-produced document dated December 9th, 1959
12 from William Esty Advertising Company to R. J.
13 Reynolds Tobacco Company, and Exhibit 12453 is the
14 accompanying summary of findings dated December 1959.

15 Are these documents which you have reviewed in
16 this case?

17 A. Yes, they are.

18 Q. And do they form part of the basis of your
19 opinions?

20 A. Yes, they do.

21 MS. WALBURN: Your Honor, we would offer
22 Exhibits 12452 and 12453.

23 MR. WEBER: No objection, Your Honor.

24 THE COURT: Court will receive 12452 and
25 12453.

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1 BY MS. WALBURN:

2 Q. This is Exhibit 12452 on the screen. It's on
3 the letterhead of William Esty Advertising Company,
4 and it's to a Mr. William W. A. Sugg of R. J.
5 Reynolds Tobacco Company, and the title of the
6 document in the upper right-hand corner is "YOUTH
7 RESEARCH INSTITUTE, 1959, CIGARETTE SMOKING STUDY
8 AMONG HIGH SCHOOL AND COLLEGE STUDENTS."

9 Turning to the last full paragraph on this page,
10 the document states, "Preference-wise, Camel and
11 Winston are shown as holding their shares
12 substantially constant while Salem increased its
13 share, especially among high school students."

14 Professor Perry, who manufactures Camel, Winston
15 and Salem?

16 A. R. J. Reynolds.

17 Q. And this letter is written to, again, which
18 company?

19 A. It's -- it's written to R. J. Reynolds Tobacco
20 Company.

21 Q. Could we turn to the attached charts in Exhibit
22 12453. And the title of this document is "THE YOUTH
23 RESEARCH INSTITUTE STUDY REGARDING CIGARETTE SMOKING
24 AMONG 7,521 HIGH SCHOOL AND COLLEGE STUDENTS IN 80
25 CITIES THROUGHOUT THE UNITED STATES,

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1 OCTOBER-NOVEMBER, 1959, SUMMARY OF FINDINGS." And
2 are these the charts attached which summarize the
3 findings of this report?

4 A. Yes, they are.

5 Q. Would you turn to the chart on Bates number
6 3725. This chart is labeled "INCIDENCE OF CIGARETTE
7 SMOKING, 1959 VERSUS 1958."

8 According to this chart, what is the percent of
9 high school students, total, who smoked?

10 A. The total percent in 1959 is 56 percent.

11 Q. And does this chart then break down that number
12 into young men and young women?

13 A. Yes. You can see that right underneath, that 61
14 percent of the young men smoke and 49 percent of the
15 young women smoke.

16 Q. What is reflected in the next two sections of
17 the chart under "High School Students, Total?"

18 A. Well what they did is they wanted to break it
19 down even further, so they looked at freshman and
20 sophomores; that is, ninth and 10th graders, and
21 again broke it down in males and females, and then
22 11th and 12th graders, and then they looked at males
23 and females under that.

24 Q. And does this chart also go on to report on
25 college students' smoking?

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1 A. Yes, it does.

2 Q. Would you turn in this same document to page
3 Bates number 3727. This chart is labeled "HIGH
4 SCHOOL STUDENTS - CURRENT TYPE AND BRAND PREFERENCES,

5 1959 VERSUS 1958." What is reported on this page?
6 A. Well this shows the percent of students who are
7 smoking particular brands in 1959 versus 1958, and
8 they've broken it out by non-filter cigarettes and
9 filter cigarettes, and they've also broken it out,
10 again, by male and female.
11 Q. And according to this chart, what were the top
12 four selling brands of cigarettes in 1959?
13 A. Pall Mall, Camel, Winston, and Kent.
14 Q. So two would be under the non-filter category
15 and two under the filter category?
16 A. Yes.
17 Q. And again, according to this chart, what was the
18 top-selling brand in 1959?
19 A. Winston.
20 Q. And who manufactured Winston?
21 A. R. J. Reynolds.
22 Q. Based upon your review of internal documents, do
23 you know whether R. J. Reynolds continued to track
24 teen-age smoking?
25 A. Yes, they did, they tracked teen-age smoking for
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1 decades.
2 Q. Professor Perry, I want you to assume that last
3 week Andrew Schindler, the CEO of R. J. Reynolds
4 Tobacco Company, testified as follows, and this is
5 from the transcript from March 5th at page 3531:
6 "Question: And beginning smokers, you said,
7 according to some government surveys, were by and
8 large under the age of 18; correct?
9 "Answer: If that's what the government surveys
10 say, I will have to go along with that.
11 "Question: And you know that RJR tracked that;
12 correct?
13 "Answer: They -- as I testified earlier,
14 through the NFO system, they were tracking under-age
15 smokers up through, I believe, 1982 or 1983."
16 From that statement and your review of tobacco
17 company documents in this case, did RJR track
18 under-age smoking in the 1950s?
19 A. Yes, they did.
20 MR. WEBER: Let me -- Your Honor, let me
21 object. And let me first say that I dropped the
22 microphone and I think it went dead, so I may have to
23 switch to the other one we've got over here.
24 But I did -- I do want to move on to the
25 substance now, and the issue is the court has
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1 continually not allowed one witness to comment on the
2 testimony of another. I think it's an improper
3 question. That's my objection.
4 THE COURT: Okay. All right. I believe
5 that it's an admission that she can comment on,
6 though.
7 BY MS. WALBURN:
8 Q. Professor Perry, did RJR track youth smoking in
9 the 1960s?

10 A. Yes, they did.
11 Q. Did RJR track youth smoking in the 1970s?
12 A. Yes, they did.
13 Q. And did RJR track youth smoking in the early
14 1980s?
15 A. Yes, they did.
16 Q. Mr. Schindler also testified at page 6487 of the
17 transcript, "You start analyzing -- analyzing brand
18 traces of under-age to project future markets, I
19 think that's wrong, I think it's frankly stupid, and
20 it shouldn't be done, and it's unnecessary."
21 Do you agree or disagree with that statement
22 from Mr. Schindler?
23 MR. WEBER: Same objection, Your Honor.
24 THE COURT: Sustained.
25 Q. Professor Perry, after the early 1980s, did RJR
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1 continue to track under-age youth?
2 A. Yes, they tracked under-age youth. They looked
3 at government sources of data and they also analyzed
4 government data. They did their own analyses of
5 government data.
6 Q. Do you have additional examples of RJR tracking
7 documents from the years when they were using private
8 surveys of under-age smokers?
9 A. Yes, I do.
10 Q. Would you turn in book one to Exhibit 12258.
11 This is a 1971 RJR document titled "SUMMARY OF
12 DECISIONS MADE IN MRD-ESTY MEETING ON APRIL 7TH, 1971
13 CONCERNING SPRING 1971 NFO TOBACCO PRODUCTS SURVEY."
14 Is this a document you have reviewed in this case?
15 A. Yes, it is.
16 Q. Does it form part of the basis of your opinions?
17 A. Yes, it does.
18 MS. WALBURN: Your Honor, we would offer
19 Exhibit 12258.
20 MR. WEBER: No objection, Your Honor.
21 THE COURT: Court will receive 12258.
22 BY MS. WALBURN:
23 Q. In looking at the title of this document,
24 "SUMMARY OF DECISIONS MADE IN MRD-ESTY MEETING," do
25 you know what the initials MRD stand for from your
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1 review of the documents?
2 A. Yes, the Marketing Research Department of R. J.
3 Reynolds.
4 Q. And what does Esty refer to?
5 A. Esty is the advertising company that worked
6 for -- or that work -- does work for R. J. Reynolds.
7 Q. Looking to the second line of the title and the
8 reference to "NFO TOBACCO PRODUCTS SURVEY," what does
9 "NFO" stand for?
10 A. NFO means the National Family Opinion,
11 Incorporated. It was a -- it's a company that
12 actually runs the surveys.
13 Q. And what is this document addressing?
14 A. This is addressing ways to manage the data,

15 collect the data, manage the data.
16 Q. Could you turn to paragraph B. on this page.
17 This states, "Respondents 20 and Younger Produced By
18 The New Questionnaire
19 "Respondents Aged 14 to 20:
20 "Cards are to be punched for all respondents 14
21 to 20."

22 And then moving down towards the bottom of the
23 page, it says, paragraph small b., starting "Smoking
24 incidence and brand preferences...." This states,
25 "Smoking incidence and brand preferences, by age, of
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1 the under-20 respondents to the new questionnaire.
2 Age breaks to be used are 14-15, 16-17, 18-20."

3 What is this addressing?

4 A. This -- this is --

5 These are agreements made to how to code the
6 data, get it into the computer, and then how to
7 analyze the data to get ready for reporting. So
8 they've made an agreement that the data should be
9 reported in these age groups, 14-15, 16-17, and then
10 18 to 20, that's how the data would be reported.

11 Q. And from your review of the tobacco company
12 documents and the Reynolds documents, did you see
13 data reported in that fashion?

14 A. Yes, I did.

15 Q. What is the legal age of smoking in the state of
16 Minnesota?

17 A. Age 18.

18 Q. And do you know what the legal age is in most
19 states in the United States?

20 A. In most states it's age 18.

21 Q. Did you also analyze Philip Morris documents
22 showing that teen-age smoking was being tracked?

23 A. Yes, I did.

24 Q. Would you turn in book one to Exhibit 11801 and
25 the companion document, 11802. Exhibit 11801 is a

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1 May 18th, 1973 document on Philip Morris U.S.A.
2 stationery titled "Incidence of Smoking Cigarettes,"
3 and the attachment, Trial Exhibit 11802, contains the
4 tables of information.

5 Are these documents which you reviewed in this
6 case?

7 A. Yes, they are.

8 Q. Do they form part of the basis of your opinion?

9 A. Yes, they do.

10 MS. WALBURN: Your Honor, we would offer
11 Exhibits 11801 and 11802.

12 MR. WEBER: No objection, Your Honor.

13 THE COURT: Court will receive 11801 and
14 11802.

15 BY MS. WALBURN:

16 Q. 11801, which is on the screen now, is on Philip
17 Morris U.S.A. interoffice correspondence stationery
18 dated May 1973, and it is from the marketing research
19 department on "Incidence of Smoking Cigarettes." The

20 bottom of the page has the distribution list, and
21 among those copied in the right-hand column is R.
22 Millhiser, who was Philip Morris president at the
23 time.

24 What is generally being addressed in Exhibit
25 11801?

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1 A. This is a report on data that a research company
2 did for Philip Morris.

3 Q. I'd like to read the first three paragraphs of
4 this document.

5 "There is continuing interest about incidence of
6 smoking and volume consumption by demographic groups.

7 "In March 1973, Opinion Research Corporation
8 conducted a national probability sample among 2060
9 respondents, 18 years of age and over (962 male and
10 1098 female), in which they asked two questions for
11 us: 'Do you smoke cigarettes, that is, at least a
12 pack a week?'; and (if yes): 'About how many
13 cigarettes do you usually smoke per day now?' In
14 addition, those same questions were asked of a
15 national probability sample of 452 teen-agers ages
16 12-17; (212 male and 240 female).

17 "The data from the study are consonant with the
18 findings of other such studies both at Philip Morris
19 and without."

20 What is the significance of this?

21 A. Well this shows that Philip Morris also worked
22 with a company, the Opinion Research Corporation, to
23 collect data on under-age youth.

24 Q. And if we turn to the chart on this page labeled
25 "INCIDENCE: OVERALL AND BY SEX," does this chart

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1 reflect the percent of adolescents aged 12 to 17 who
2 smoke?

3 A. Yes, it does. About 13 percent total of age 12
4 to 17 smoke.

5 Q. And that would be on the left-hand column of the
6 chart?

7 A. Right.

8 Q. Does this chart also reflect the amount of
9 cigarettes smoked by under-age youth?

10 A. Yes. On the right-hand side of the chart you
11 can see it says "Average Consumption Among Smokers
12 (Cigarettes per day)," so how many cigarettes per day
13 on average, and you can see for 12- to 17-year-olds,
14 they smoke about 10.6 cigarettes per day, whereas the
15 18 and over smoke almost double, 20.6 cigarettes per
16 day.

17 Q. What is the significance of that data?

18 A. Well the significance is -- is that -- is that
19 young people start off smoking -- smoking a little
20 bit, and so the importance of young people isn't how
21 much they smoke, how many cigarettes they consume,
22 but that they get started smoking, because their
23 consumption, the amount of cigarettes that they will
24 smoke, will increase over time.

25 Q. The bottom of that chart states "See Following
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1 Tables For Further Data." Would you turn to Exhibit
2 11802, and is that the attached data?

3 A. Yes, they are.

4 Q. Would you turn in that exhibit to page 1795.
5 This is Table 4, and it's titled "INCIDENCE OF
6 SMOKING BY DEMOGRAPHIC GROUP (AGES 12-17), (MARCH
7 1973).

8 "DO YOU YOURSELF SMOKE CIGARETTES; THAT IS, AT
9 LEAST A PACK A WEEK?" And the first column entry is
10 for total teen-agers, percent smoking, 13. Then it
11 breaks it down to boys, 14 percent, girls, 13
12 percent, 12 to 13 years of age, three percent, 14 to
13 15 years of age, 13 percent, 16 to 17 years of age,
14 24 percent.

15 What is the significance of this information?

16 A. Well first of all, just by using the term "boys
17 and girls," it reflects that they know these are
18 children rather than adults. And if we go down the
19 chart, they've collected a lot of different kinds of
20 demographic data, such as, you know, what percent
21 smoke in what area, whether it's metro, non-metro,
22 family income. These are the kind of data that might
23 be useful in selling cigarettes.

24 Q. Were there other Philip Morris documents which
25 you reviewed in which sales to under-age youth were

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1 tracked?

2 A. Yes, there were.

3 Q. Did you see documents from Brown & Williamson
4 which also tracked teen-age smoking?

5 A. Yes, I did.

6 Q. Would you turn in book two to Exhibit 13723.
7 This is a 1973 Brown & Williamson document titled
8 "NEW PRODUCT CONCEPTS," and would you turn to Bates
9 number 6812. This chart is titled "Brand Switching
10 Study," and could you please explain this chart.

11 A. Yes. They've broken this down by Brown &
12 Williamson brands Viceroy and Raleigh, so that "V&R,"
13 Viceroy and Raleigh, and then down, Brown &
14 Williamson brands Kool and Belair. And they're
15 reporting the share of users, what percent are
16 smoking Viceroy and Raleigh or Kool and Belair, and
17 they've broken that down by age groups 16 to 25, 26
18 to 40, and over 41. So 5.4 percent of smokers smoked
19 Viceroy -- that are 16 to 25 years old smoked Viceroy
20 and/or Raleigh -- and Raleigh.

21 Q. Did you review other Brown & Williamson
22 documents where information was reported in this
23 fashion for the age group 16 to 25?

24 A. Yes. Brown & Williamson regularly reported
25 their data for 16- to 25-year-olds.

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1 Q. In addition to reporting the statistics on
2 teen-age smoking, did the tobacco company documents
3 also discuss the significance of those statistics?
4 A. Yes, they did. The tobacco companies really saw
5 how critical teen-agers, under-age teens were to
6 the -- to the future of their business.

7 Q. Would you turn in book one to Exhibit 10528.
8 This is a document that has previously been admitted
9 into evidence. It is dated May 21st, 1975, Philip
10 Morris U.S.A. inter-office correspondence from Myron
11 Johnston, an R&D analyst, to Dr. R. B. Seligman, an
12 R&D executive, and it's titled "The Decline in Rate
13 of Growth of Marlboro Red." And it also reflects in
14 the upper right-hand column the name "Dr. Dunnn."

15 Can you generally describe this document,
16 Professor Perry.

17 A. Yes. This is a report on -- on the decline of
18 Marlboro Red at this particular point in time.

19 Q. Turning to --

20 MR. WEBER: Your Honor, I'm sorry to
21 interrupt, but we've got some question here. As Your
22 Honor knows, I'm collecting objections for the group.
23 Our records don't show this was admitted yet. I just
24 want to raise that issue and make sure we've got the
25 proper procedure in place here.

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1 Sorry I'm late, but I was checking with some of
2 the others to check their records as well.

3 THE COURT: Okay.

4 MR. CIRESI: If I may, Your Honor, it
5 wasn't admitted, but I believe it was admitted under
6 another number.

7 THE COURT: Okay. Could you give me the
8 other number, please? Do we have the other number?

9 MR. CIRESI: I don't have it right here,
10 but we will get it for Your Honor.

11 THE COURT: Well --

12 MR. WEBER: It was admitted, Mr. Ciresi?
13 Okay. Then we can get the number from them later.

14 THE COURT: Okay.

15 BY MS. WALBURN:

16 Q. Turning to the last paragraph on this page
17 titled "Demographics," this states, "It has been well
18 established by the National Tracking Study and other
19 studies that Marlboro has for many years had its
20 highest market penetration among younger smokers.
21 Most of these studies have been restricted to people
22 age 18 and over, but my own data, which includes
23 younger teen-agers, shows even higher Marlboro market
24 penetration among 15- to 17-year-olds. The teen-age
25 years are also important because those are the years

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1 during which most smokers begin to smoke, the years
2 in which initial brand selections are made, and the
3 period in the life-cycle in which conformity to
4 peer-group norms is the greatest."

5 What is the significance of this statement?

6 A. Well there's a number of significances to the
7 statement. First, it is another indication that
8 Philip Morris had its own internal data, and that
9 that data included data on 15- to 17-year-olds. But
10 in this document it also reveals that they knew that
11 their highest -- the highest percentage of Marlboro
12 smokers were 15 to 17 years old, so their highest
13 market penetration, as they said, was in 15- to
14 17-year-olds.

15 They also make three statements that -- at the
16 very last sentence -- that I think are very critical,
17 that they know that the teen-aged years, that's when
18 people begin to smoke, so they realize that. That's
19 also the time when they make their brand selections,
20 so that is very critical. And it's also the time
21 when -- when peer-group conformity is -- is in place,
22 so that they know about the peer groups and
23 peer-group conformity, and they can appeal -- or
24 perhaps exploit peer-group conformity.

25 Q. Would you turn in this document to page five.

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1 And that's page five at the top, not the Bates
2 number.

3 This states "Conclusion," towards the bottom of
4 the page, and the second paragraph under "Conclusion"
5 states, "If we consider further the reported decline
6 in Marlboro's popularity among young, we are left
7 with the unpleasant but very real likelihood that
8 Marlboro market share will peak in the very near
9 future, probably in 1976 or 1977."

10 What is the significance of that statement?

11 A. Well they're seeing that there's some decline in
12 the Marlboro's popularity, and they think that that
13 is a bad thing that's happening. That -- that
14 Marlboro's declining, then that -- then that is a
15 negative thing for their company. And since Marlboro
16 is being smoked by the 15- to 17-years-olds, that
17 that also is a bad occurrence for -- for that -- for
18 them to be declining in the amount they're smoking
19 Marlboro.

20 Q. Would you turn in the same book, book one, to
21 Exhibit 13005. This is a document that has
22 previously been admitted. It's titled "Winston
23 1990+, prepared for RJR Tobacco by FCB/LKP Marketing
24 Planning Department 12.18.89."

25 Would you turn in this document to Bates number

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1 5898. And the top of this page states "Winston, of
2 course, faces one unique challenge we need to mention
3 before we begin. It's what we've been calling the,
4 quote, 'doomsday scenario:' an acute deficiency of
5 young adult smokers, apparently implying Marlboro's
6 final domination and our utter demise within a
7 generation."

8 What is the significance of that statement?

9 A. Well the significance is is that Winston sees
10 that if they don't get more new smokers, that new

11 smokers, who are primarily under-age smokers, are
12 needed for their company or they will be facing
13 doomsday, their company, their brand will be facing
14 doomsday because the young smokers are needed as
15 replacement smokers.

16 Q. Would you turn in this same book to Exhibit
17 12579. This is a document which has been previously
18 admitted. It's titled at the top of the page "RJR
19 SECRET, STRATEGIC RESEARCH REPORT," it's dated
20 February 29th, 1984, from Diane Burrows, who is in
21 the marketing department at Reynolds, and it's to
22 three people, including G. H. Long, the president of
23 RJR, and it's titled "YOUNGER ADULT SMOKERS:
24 STRATEGIES AND OPPORTUNITIES."

25 Would you turn to Bates numbers 8471. This page
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1 is titled "THE IMPORTANCE OF YOUNGER ADULT SMOKERS,"
2 and under paragraph one, "VOLUME," this states,
3 "Younger adult smokers are the only source of
4 replacement smokers. Repeated government studies
5 (Appendix B) have shown that:

6 "Less than one-third of smokers (31 percent)
7 start after age 18.

8 "Only 5 percent of smokers start after age 24.

9 "Thus, today's younger adult smoking behavior
10 will largely determine the trend of industry volume
11 over the next several decades. If younger adults
12 turn away from smoking, the industry must decline,
13 just as a population which does not give birth will
14 eventually dwindle."

15 What is the significance of that statement?

16 A. Well RJR's recognizing that without new smokers,
17 the ones entering, in essence giving birth to their
18 market, that -- that their market will dwindle and
19 eventually die without these new smokers, and the new
20 smokers, as we know, are primarily under-age.

21 Q. Would you turn in this document to Bates number
22 8526. This page is titled "YOUNGER ADULTS'
23 IMPORTANCE AS REPLACEMENT SMOKERS." Could you please
24 explain the information that's contained on this
25 page.

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1 A. Yes. They have data showing the percent of male
2 smokers, at the very top, by what age they started
3 smoking, and so they're -- they're showing at what
4 age, from, you know, age 13 up to age 24, that
5 they -- they start smoking, you know. And then at
6 the bottom they show the current male smokers and
7 what percent -- at what age they started smoking.
8 And so you can see that, according to the data at
9 this time, 68.7 percent of male smokers started by
10 age 18.

11 Q. And what age does this chart begin at?

12 A. This chart began at age 12. You see that 9.9
13 percent of male smokers began smoking by age 12. So
14 these are the ages of the -- that they were referring
15 to, is when people start in terms of being

16 replacement smokers.
17 Q. Where does the data from this chart come from?
18 A. This comes from the Department of Health,
19 Education and Welfare, and it's federal data.
20 Q. Turning again to the title of this page, the
21 title uses the term "younger adults." Again, what is
22 the age range of the people being discussed in these
23 statistics on this page?
24 A. The age range is, in total, about 12 to age 25.
25 Q. Could we turn in this document to Bates number
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1 8465. This page is titled "MANAGEMENT SUMMARY," and
2 the second title on the page is "THE IMPORTANCE OF
3 YOUNGER ADULT SMOKERS."
4 This states, "Younger adult smokers have been
5 the critical factor in the growth and decline of
6 every major brand and company over the last 50 years.
7 They will continue to be just as important to
8 brands/companies in the future for two simple
9 reasons:"
10 And the first bullet point is, "The renewal of
11 the market stems almost entirely from 18-year-old
12 smokers. No more than 5 percent of smokers start
13 after age 24."
14 What is the significance of that statement?
15 A. Well what they're talking about is that every
16 brand that became a major brand for the past 50 years
17 became a major brand because they appealed to younger
18 smokers, to young smokers, and they're saying that
19 their market is renewed by 18-year-olds, those who
20 began as under-age teens.
21 Q. This document that we've been looking at uses
22 the term "younger adult smokers." How does this
23 document define that term?
24 A. This document defines it in a number of ways.
25 We saw in the chart that younger adult smoker as
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1 replacement smokers, they went from age 12 to age 25;
2 on this page they're talking about 18-year-olds; the
3 last page, they had an age window of 18 to 24 that
4 they called young adults.
5 Q. Have you seen the term "young adults" used in
6 other tobacco company documents which you have
7 reviewed?
8 A. Yes, I have.
9 Q. How is that term defined in the other tobacco
10 company documents you have seen?
11 A. In a variety of ways.
12 Q. Are there some documents that define that term
13 to be youth under age 18?
14 A. Yes, there are.
15 Q. Are there some documents that define that term
16 to be people over age 18?
17 A. Yes, there are.
18 Q. Are there some documents that contain no
19 definition of that term?
20 A. Yes, there are.

21 Q. Based upon your review of tobacco company
22 documents, was there any pattern in how that term
23 "young adult" was used?
24 A. Yes, there was -- there was a strong pattern.
25 What I found was that in the '50s and '60s and '70s,
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1 the documents most -- most of the time referred to
2 under-age smokers as teen-agers or teens or high
3 school students. In more recent years the
4 terminology changed and they referred to younger
5 smokers as young adult smokers or younger adult
6 smokers. And it seemed as if this change occurred
7 just about the same time as there was increased
8 public pressure on tobacco companies to not market to
9 young people.

10 MR. WEBER: Your Honor, I'd move to strike
11 the last part after "it seemed as if," that's not
12 expert opinion, it's invading the province of the
13 jury.

14 THE COURT: Yeah. Well that last sentence
15 will be stricken.

16 Q. From your review of tobacco company documents
17 and from your review of tobacco company advertising
18 and promotion campaigns, do you see any change in the
19 advertising and promotion practices when the
20 companies changed their terminology to "young
21 adults?"

22 A. No. Young -- young people under age still
23 continued to be primarily the people who started
24 smoking, and many advertising campaigns would appeal
25 to under-age teens.

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1 Q. Throughout this period of time and into the more
2 recent years when from your review of the documents
3 the terminology changed to "young adults," has the
4 significance of under-age smokers to the tobacco
5 industry changed at all?

6 A. Yes, the significance of under-age smokers has
7 actually increased. Under-age smokers have become
8 more important because fewer adults are starting to
9 smoke. So fewer people over the age 18, fewer
10 percent of people over the age 18 are starting to
11 smoke, so more people who are under age, a greater
12 percent of people over time are under the age of 18,
13 so they're even more important because they
14 constitute a greater percentage of new smokers.

15 Q. Would you turn in book one to Exhibit 12493.
16 This is a document which has previously been
17 admitted, "Presentation to RJRI Board of Directors,
18 9/30/74, Marketing Plans." And could we turn to the
19 next page. On the second-to-last paragraph, this
20 states, "First, let's look at the growing importance
21 of the young adult in the cigarette market. In 1960,
22 this young adult market, the 14-to-24 age group,
23 represented 21 percent of the population."

24 What's the significance of this statement?

25 A. Well they're explicitly defining the young adult

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1 as ages 14 to 24, so including under-age teens
2 explicitly as part of the young adult market.
3 Q. Did you see any documents where company
4 employees were directed to use specific terminology
5 in describing young smokers?
6 A. Yes, I did.
7 Q. Would you turn in book two to Exhibit 13724.
8 This is a January 24th, 1975 Brown & Williamson
9 memorandum, it's from Mr. R. A. Pittman, executive
10 vice-president of Brown & Williamson, to a number of
11 individuals including Mr. J. A. Broughton,
12 vice-president of sales, Mr. J. R. Anders,
13 vice-president, and Mr. J. W. Groome, director of
14 advertising and brand management.
15 Is this a document which you have reviewed in
16 this case?
17 A. Yes, it is.
18 Q. Does it form part of the basis of your opinion?
19 A. Yes, it does.
20 MS. WALBURN: We would offer Exhibit 13724.
21 MR. WEBER: No objection, Your Honor.
22 THE COURT: Court will receive 13724.
23 BY MS. WALBURN:
24 Q. This entire document consists of three
25 paragraphs. It states, "From time to time when

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1 describing market categories and target audiences we
2 use references such as, quote, 'young smokers,'
3 'young market,' 'youth market,' et cetera.
4 "These terms do not accurately describe what we
5 are talking about. In the future when describing the
6 low-age end of the cigarette business please use the
7 term 'young adult smoker' or 'young adult smoking
8 market.'
9 "Please advise all members of your department
10 that these terms should be used in all written
11 materials in the future."
12 Professor Perry, this memo uses the phrase "the
13 low-age end of the cigarette business." What is the
14 low-age end of the cigarette business?
15 MR. WEBER: Your Honor, I'd object to that
16 if it's directed to this document. It's calling for
17 speculation as to what the author meant.
18 THE COURT: Well you may answer that.
19 A. Well at this time the low-age end of the
20 cigarette market, according to both company and
21 government data, would have been about age 12 to 17.
22 Q. Can we return to the smoking onset process. And
23 was this discussed in the 1994 Surgeon General's
24 report?
25 A. Yes, it was.

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1 Q. Would you turn to page 126 of the Surgeon

2 General's report, and that is Exhibit 3284. This is
3 a chart titled "Stages of smoking initiation among
4 children and adolescents." Using this chart, could
5 you explain the stages of smoking initiation.

6 A. Yes. The -- it takes about two to three years
7 to go through the stages of smoking onset for -- for
8 young people; that means two to three years from your
9 first cigarette to becoming a daily smoker, so it's a
10 two- or three-year process. And there are five
11 stages involved in this process.

12 The first is called the preparatory stage, and
13 that's when adolescents form attitudes, beliefs about
14 the utility or the function of smoking.

15 The second stage is called the trying stage,
16 where the adolescents smoke their first few
17 cigarettes. And remember that about two out of three
18 adolescents who try a cigarette go on to becoming
19 daily smokers.

20 The third stage is called the experimental
21 stage, where the adolescent is smoking repeatedly but
22 irregularly. It's not regular at that point.

23 And the fourth stage is regular smoking, where
24 the adolescent is smoking at least weekly in a
25 variety of situations and personal interactions.

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1 And the fifth stage is addiction or dependence
2 smoker, where the adolescent has developed a
3 physiological need for nicotine.

4 So that whole -- the process from first trying
5 to daily smoker, that's about two to three years.

6 Q. And with respect to the stages of smoking
7 initiation which are described in this chart, at what
8 stage of life do these stages generally occur?

9 A. Almost all these stages occur during
10 adolescence.

11 Q. Can we turn, Professor Perry, to the subject of
12 why adolescents begin to smoke. Was this also
13 covered in the 1994 Surgeon General's report?

14 A. Yes, it was. In fact, that part of the report
15 was one of the parts where I did the primary research
16 and the writing of that -- of the report.

17 Q. Approximately how many articles did you review
18 in putting together that section of the report?

19 A. I read hundreds of articles on why teens start
20 to smoke.

21 Q. And at the most basic level, what are the
22 reasons why teens start to smoke?

23 A. Well at the most basic level there's two
24 reasons. An adolescent, a teen will start smoking
25 when the social environment presents smoking as a

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1 functional and rewarding behavior to the adolescent,
2 so they'll start smoking if the social environment
3 presents smoking as functional and rewarding, and
4 because adolescents are at a particularly vulnerable
5 or susceptible developmental stage.

6 Q. Would you turn in the Surgeon General's report,

7 Exhibit 3824, to page 123 and Table 1. This is a
8 table titled "Psychosocial risk factors in the
9 initiation of tobacco use among adolescents." Could
10 you explain this table, please.

11 A. Yes. This is a table that I prepared for the
12 report which summarizes all of those hundreds of
13 papers that I read on why teens begin to -- to smoke,
14 and so this -- what this does is divide up the risk
15 factors of those factors that increase the risk of
16 smoking into four major areas: sociodemographic
17 factors, and then down further, environmental
18 factors, and then down further, behavioral factors,
19 and then personal factors. And those little X's
20 indicate where we found some association between that
21 factor and -- and smoking among -- among youth.

22 Q. According to your research, which of these
23 factors is most important?

24 A. The environmental factors as a -- as a group are
25 the most important in predicting the onset of

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1 smoking.

2 Q. And is advertising one of the environmental
3 factors that is listed in this chart?

4 A. Yes, it is. In fact, advertising was considered
5 so important we took it out of this chapter and we
6 created a chapter -- an entire chapter on advertising
7 for the Surgeon General's report. Also, advertising
8 affects these other factors, it affects peer use,
9 normative expectations, it affects some of the
10 personal factors. So that's -- we decided to create
11 its own chapter.

12 Q. And again, there is an X by advertising on this
13 chart?

14 A. Yes, there is.

15 Q. Could we move down the chart to personal
16 factors. It lists there knowledge of consequences.
17 Can you explain what that shows?

18 A. Well as you can see, there's no little X next to
19 the knowledge of consequences, and what that means is
20 the data showed that having knowledge of consequences
21 wasn't a predictor of whether adolescents would or --
22 or wouldn't smoke. In fact, at this -- at this stage
23 of life, knowledge of consequences doesn't have much
24 effect on their behavior. They can't really process
25 these consequences.

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1 Q. And moving back up to environmental factors,
2 there's a line there for parental use. Can you
3 explain what this chart shows with respect to
4 parental use?

5 A. Well we didn't put a little X by parental use
6 either. After reviewing all the literature, it
7 didn't turn out to be a strong factor, much to our --
8 our surprise.

9 MS. WALBURN: May I approach, Your Honor?

10 Q. Showing you a board which has been marked
11 Exhibit 30240, is this a chart which was prepared

12 under your direction?
13 A. Yes, it was.
14 Q. And would this be helpful in illustrating your
15 testimony?
16 A. Yes, it would be.
17 MS. WALBURN: Your Honor, we would offer
18 Exhibit 30240 for illustrative purposes.
19 MR. WEBER: No objection, Your Honor.
20 THE COURT: Court will receive 30240 for
21 illustrative purposes.
22 BY MS. WALBURN:
23 Q. With the court's permission, professor, could
24 you come down and explain this chart.
25 A. This is a chart we prepared on the social
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1 environment of adolescents, and you can see that the
2 adolescent -- the adolescent is here, just as the
3 adolescent would like to be, in the middle of the
4 universe, and nearest to the adolescents are parents,
5 siblings and best friends. Next nearest are peers,
6 relatives, teachers, other friends. And next are
7 community members, community policies and practices,
8 media and advertising, and societal leaders. All of
9 these layers influence the adolescent.
10 Q. How would the outer layer, including media and
11 advertising, influence the adolescent?
12 A. Well this layer can influence the adolescent if
13 it's potent or pervasive. It can influence the
14 adolescent directly, but also it can influence the
15 adolescent by influencing others who in turn will
16 influence the adolescent.
17 In a way we can think of this outer layer as
18 kind of permeating the social environment of the
19 adolescent.
20 Q. Professor Perry, with this chart in mind, how
21 would you describe cigarette advertising in the
22 United States?
23 A. I would describe it as potent in terms of the
24 kinds of images that it projects, pervasive because
25 there's so much advertising, and influential, it's an
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1 influence on other people in the social environment
2 as well as influencing the adolescents directly.
3 Q. Based upon your experience and research, what do
4 adolescents say when asked to identify the reasons
5 why they started smoking? What factors do they list?
6 A. Well adolescents list a lot of factors for why
7 they start smoking, but they generally did not list
8 advertising as a factor.
9 Q. And based upon your experience and research, why
10 is it that young people do not mention advertising as
11 a factor?
12 A. Well adolescents primarily can see and
13 understand what they -- what -- what's closest to
14 them, kind of like what they can see and touch and
15 feel. So they can see and understand those that are
16 closest to them, but they cannot really see or

17 understand the influence of the larger social
18 environment.
19 Q. Thank you. You can return to the stand.
20 Would you turn in book two, please, to Exhibit
21 26063. This is an article titled "Seventh Graders'
22 Self-Reported Exposure to Cigarette Marketing and Its
23 Relationship to Their Smoking Behavior," by Caroline
24 Schooler and several other authors. It ran in
25 September 1996 in the American Journal of Public
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1 Health.
2 Is this an article that is published in a
3 reliable journal by a reliable author?
4 A. Yes, it is.
5 Q. Does it form part of the basis of your opinions?
6 A. Yes, it does.
7 MS. WALBURN: Your Honor, we would offer
8 this under Rule 803(18).
9 MR. WEBER: No objection, Your Honor.
10 THE COURT: Court will receive 26063.
11 BY MS. WALBURN:
12 Q. Can you generally describe this article.
13 A. Yes. This article reports on seventh graders'
14 exposure to different advertising and promotional
15 activities and the influence on their behavior.
16 Q. And have you prepared a chart using the
17 information from this article?
18 A. Yes, I have.
19 Q. Would you turn in the same book to Exhibit
20 26070. Is this the chart which you prepared?
21 A. Yes, it is.
22 Q. Would it be helpful in explaining your
23 testimony?
24 A. Yes, it would be.
25 MS. WALBURN: Your Honor, we would offer
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1 Exhibit 26070 for illustrative purposes.
2 MR. WEBER: No objection, Your Honor.
3 THE COURT: Court will receive 26070 for
4 illustrative purposes.
5 BY MS. WALBURN:
6 Q. Could you please explain this chart for the jury
7 and the court.
8 A. Yes. This is --
9 These are data collected from seventh graders,
10 which are their reports of how much exposure they
11 have to particular cigarette advertising and
12 promotional activities. And just as a reminder,
13 seventh graders are about 12 or 13 years old, just so
14 you can remember that.
15 The first line says -- tells us whether they
16 saw -- how many reported seeing cigarette
17 advertisements in magazines either sometimes or a
18 lot, and the total, you can see 50 percent reported
19 seeing cigarette advertisement in magazines sometimes
20 or a lot, that was 73 percent of males and 32 percent
21 of females.

22 Going down, you can see that they report seeing
23 billboard cigarette ads -- 90 percent report seeing
24 billboard cigarette ads sometimes or a lot.
25 Then we looked at -- or they looked at cigarette
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1 ads in stores, and you can see about 62 percent of
2 these seventh graders see cigarette ads in stores
3 sometimes or a lot. And then cigarette ads at sports
4 or other events, 74 percent see cigarette ads at
5 sports or other events sometimes or a lot.

6 Then they were asked had they received mailing
7 from cigarette companies, and this was mailing that
8 was addressed to them, seventh graders, and you can
9 see that 17 percent reported having received a
10 mailing from a cigarette company.

11 Finally, they were asked if they owned a
12 cigarette promotional item, and 27 percent of the
13 seventh graders reported owning a cigarette
14 promotional item.

15 Q. What is the significance of the information in
16 this chart and article?

17 A. Well I think this -- the significance of this is
18 the -- is just very high exposure that even young
19 adolescents have to advertisements in magazines,
20 billboards, stores and events. Also that they --
21 they do receive mailings. And -- and over a quarter
22 own some kind of promotional item at age 12, 13 years
23 old.

24 Q. Professor Perry, do you have some paragraphs to
25 illustrate cigarette advertising and promotions in

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1 the Twin Cities?

2 A. Yes, I do.

3 Q. And did you direct the types of photographs to
4 be taken?

5 A. Yes, I did. I directed the photographer to take
6 photographs around the Twin Cities. This was right
7 over the holiday time. I wanted, you know, pictures
8 of billboards, bus stops, convenience stores, inside
9 and out, and point of purchase, to demonstrate the
10 pervasiveness of -- of advertising in our community.

11 MS. WALBURN: Your Honor, at this time we
12 would offer for illustrative purposes the following
13 eight photographs by exhibit numbers: 30228, 30258A,
14 30258B, 30259A, 30259B, 30263, 30265A and 30265B.

15 MR. WEBER: Your Honor, with respect to
16 these, I'd raise two issues. One, they weren't
17 disclosed in the course of the expert discovery,
18 either in the report or in the depositions. And
19 secondly, I think they were just taken recently, and
20 that raises that 1994 issue.

21 MS. WALBURN: Your Honor, with respect to
22 expert disclosure, these documents -- these
23 photographs were on the exhibit list and copies were
24 provided to the defendants in December. We sent a
25 letter to defendants last week asking if they had

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1 objections to foundation of these photographs, and we
2 received no response. So we have affidavits from the
3 photographer and an investigator who accompanied the
4 photographer, and we have those for the court if the
5 court so desires.

6 With respect to the post-'94 issue, that
7 addresses discovery issues. This is information
8 which is out there in the public, and there's been no
9 such cutoff for that information.

10 MR. WEBER: My issue is not so much the,
11 you know, authenticity of the photographs, I'm sure
12 somebody went out and took photographs in the field
13 and they were accurately reproduced. My issue
14 primarily goes to the fact, with all the expert
15 discovery we did, this was never disclosed to us as
16 part of the presentation of the professor.

17 THE COURT: Well, I'm going to allow the
18 pictures as 30228, 30258A/B, 30259A/B, and 30265A/B.
19 Is that correct?

20 MS. WALBURN: And I think one additional
21 one, 30263.

22 THE COURT: 30263. They'll be received for
23 illustrative purposes.

24 BY MS. WALBURN:

25 Q. Can we turn to Exhibit 30265A first. Can you

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1 describe this photograph, please.

2 A. Yes. This is a photograph taken from the
3 freeway near St. Paul. The overhead doesn't do it
4 quite justice, but you can see the Marlboro ad's very
5 prominent on the freeway, and then in the back you
6 can see the Winston billboard.

7 Q. Can you turn to Exhibit 30265B. Can you
8 describe this photograph.

9 A. Yes. This is a bus stop and you see
10 advertisements at bus stops. This was a new Camel
11 campaign, "What you're looking for," and this also is
12 shot in the Twin Cities.

13 Q. Would you turn to Exhibit 30258A. Would you
14 describe this photograph, please.

15 A. Yes. This is a photograph of a neon billboard,
16 which is quite noticeable at nighttime.

17 Q. Would you turn to Exhibit 30259B.

18 MR. WEBER: Your Honor, could I ask on
19 these, as we go through, that if the professor knows,
20 she could state where these are, just --

21 THE COURT: If she knows, I think that
22 would be appropriate.

23 MS. WALBURN: Your Honor, I have that
24 information and can provide it for the record.

25 THE COURT: All right. Then as you go

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1 along, maybe you can identify its location.

2 BY MS. WALBURN:

3 Q. Exhibit 30259B is a photograph taken on December
4 30th outside a convenience market at the intersection
5 of Prosperity Avenue and Maryland Avenue in St. Paul.
6 Could you describe this photograph, please.
7 A. Yes. This convenience store, the point of this
8 is just the amount of advertising, the small
9 advertisings, Kool, Newport, Marlboro, et cetera,
10 outside the convenience stores.
11 Q. Could you turn to Exhibit 30228. And this is a
12 photograph taken on January 7th at a convenience
13 store in Prior Lake. Would you describe this
14 photograph.
15 A. Yes. This is looking inside a convenience store
16 and a prominent advertisement inside the store.
17 Q. Would you turn to Exhibit 30263. This
18 photograph was taken on December 30th inside a
19 convenience store at Maryland and Duluth in St. Paul.
20 Would you describe this photograph, please.
21 A. Yeah, this -- this -- yes. This is a
22 point-of-purchase display, and there's a holiday
23 special for Marlboro, there's a Merit special where
24 you buy two packs and you get a free ice scraper.
25 And what -- the point-of-purchase displays just make

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1 it more attractive for the buyer when they're in the
2 store.
3 Q. Would you turn to Exhibit 30258B. And this
4 photograph was taken on December 30th inside a market
5 at White Bear Avenue and East 7th Street in St. Paul.
6 Would you describe this photograph, please.
7 A. Yes. You can see the advertisement for Camel,
8 pointing -- there's two advertisements actually,
9 advertisements along the wall here next to the can --
10 the can -- the candy; cigarettes being sold all
11 behind there.
12 Q. And finally would you turn to Exhibit 30259A.
13 This is a photograph taken on December 30th inside a
14 market at the intersection of Prosperity Avenue and
15 Maryland Avenue, it's in St. Paul. Would you
16 describe this photograph, please.
17 A. Well this just shows advertisements at a low
18 level that even a very small person can't miss this
19 advertisement, Salem, Move to Smooth, the Winston, No
20 Bull.
21 Q. Are there other types of promotional items used
22 by the tobacco companies?
23 A. Yes, there are.
24 Q. Would you turn in your book to Exhibit 14784.
25 And I believe that's in book two. Is this an example

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1 of a promotional item from R. J. Reynolds?
2 A. Yes, it is.
3 Q. Does it form part of the basis of your opinions?
4 A. Yes, it does.
5 MS. WALBURN: Your Honor, we would offer
6 Exhibit 14784.
7 MR. WEBER: No objection, Your Honor.

8 THE COURT: Court will receive 14784.
9 BY MS. WALBURN:
10 Q. I have our one original copy here.
11 MS. WALBURN: With the court's permission,
12 can I approach?
13 (Document handed to the witness.)
14 Q. Can you describe -- describe this exhibit for
15 the jury and the court, please.
16 A. Yes. This is a promotional booklet. On the
17 front it says "Wanna see a show?" And it opens up
18 and there's a flip-out with Joe Camel offering --
19 offering tickets and -- and it reads, "Go ahead, it's
20 on me. Save \$25 on Ticketmaster tickets with Camel
21 Cash.
22 "I'm not just talkin' concerts. With these \$25
23 gift certificates, you could save on tickets to just
24 about any Ticketmaster event. And it only takes 100
25 Camel Cash C-Notes to get one. What is this rockin'
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1 deal? Just flip the page, and you'll find it in the
2 Camel Cash Rockin' Road Trip."
3 So then if you flip the page, the Rockin' Road
4 Trip is a promotional catalog, and it says, "Take a
5 Rockin' Road Trip," and it says, "Someone take your
6 Road Trip?" Means did they take this promotional
7 catalog. "No problem. To get your own and save \$25
8 on Ticketmaster tickets, go to -- to wherever you buy
9 your smokes, or call 1-800-CAMEL-CASH (that's
10 1-800-226-3522)."
11 And so what this does is offer tickets if you
12 have saved up Camel Cash, and you save up Camel Cash
13 by smoking Camel cigarettes.
14 Q. Professor Perry, is there evidence that
15 advertising and promotion affects adolescents'
16 perceptions of smoking?
17 A. Yes, there are. The pervasiveness of smoking
18 affects adolescents' perceptions of -- of whether
19 smoking is considered usual or normal behavior.
20 Q. And did the Surgeon General's report address
21 this issue?
22 A. Yes, it did.
23 Q. Would you turn in book two to Exhibit 26069.
24 THE COURT: Counsel, I wonder if we should
25 take a recess at this time.
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1 THE CLERK: Court stands in recess.
2 (Recess taken.)
3 THE CLERK: All rise. Court is again in
4 session.
5 (Jury enters the courtroom.)
6 THE CLERK: Please be seated.
7 THE COURT: Counsel.
8 MS. WALBURN: Thank you, Your Honor.
9 MS. WALBURN: Before we proceed to clear up
10 the record on the Philip Morris exhibit, which was
11 referenced earlier, Trial Exhibit 10528 was
12 previously admitted as Trial Exhibit 2557.

13 THE COURT: Thank you.
14 BY MS. WALBURN:
15 Q. Professor Perry, turning to Exhibit 26069, this
16 is a chart titled "Teens' Perceptions of the
17 Prevalence of Smoking." Is this a chart which you
18 prepared?
19 A. Yes, it is.
20 Q. And what is the source of information for this
21 chart?
22 A. These are quotations from the Surgeon General's
23 report.
24 MS. WALBURN: Your Honor, we would offer
25 Exhibit 26069 for illustrative purposes.
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1 MR. WEBER: No objection, Your Honor.
2 THE COURT: Court will receive 26069 for
3 illustrative purposes.
4 BY MS. WALBURN:
5 Q. Would you please explain this chart, Professor
6 Perry.
7 A. Yes. First I should say it's the 1994 Surgeon
8 General's report, because there's lots of Surgeon
9 General's reports. So this was the report on teen
10 smoking, and these are three facts that we discovered
11 as part of the Surgeon General's report on teens'
12 perceptions of the prevalence of smoking; that is,
13 what do teens -- how -- how many percentages of
14 people do teens think smoke, and the first point is
15 that:
16 "Studies have consistently reported that teens
17 overestimate the prevalence of cigarette smoking..., "
18 and what this means is that many studies have shown
19 that teens think that, for example, two-thirds of
20 adults smoke or a large percent of teens smoke, a
21 greater percentage than actually do smoke.
22 The second point is -- says, "Significant
23 associations were also found between exposure to
24 cigarette advertising and students' estimates of
25 smoking prevalence among their peers and among
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1 adults." And what this quote means is that
2 associations, statistically significant associations
3 were found between exposure, how much cigarette
4 advertising students had seen, and these percentages,
5 how much they estimated that peers and adults smoked.
6 And the final quote is that "Overestimating
7 smoking prevalence has been found to be among the
8 strongest predictors of smoking initiation...." So
9 these overestimates, or the adolescents who are more
10 likely to overestimate, they're more likely to go on
11 to -- to smoke.
12 Q. In your own experience and research in this
13 area, have you found a pattern similar to that
14 reported in the Surgeon General's report with respect
15 to this information?
16 A. Yes. We -- we called a part of our program, and
17 I described our programs to you on Friday, and as

18 part of our programs we do what we call correcting
19 norms, but by "norms" is what they -- what they
20 think, whether they think smoking is usual behavior.
21 And I'll just describe how the lesson goes so that
22 you can see how this works. And we've done this
23 really in literally hundreds of classrooms. The
24 students are in small groups led by their peer
25 leader, and they're asked to write down the number of

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1 seventh graders -- this is usually done in the sixth
2 or seventh grade -- the number of seventh graders who
3 usually smoke or who they -- who they think are
4 smokers, are regular smokers.

5 So at first we did it with percentages, but we
6 found that was a little difficult, so then we said
7 out of a hundred seventh graders, how many do you
8 think are regular smokers? And so each student in
9 that group writes down their number secretly, and
10 then the peer leader collects the numbers from their
11 group and gets an average for their -- for their
12 group. And you can imagine with seventh graders,
13 this takes 15, 20, 25 minutes for them to do this.

14 Then they report back what their average guesses
15 are, their perceptions of how many people their age,
16 seventh graders, smoke, and every time we've done
17 this the averages have been from 40 percent to 60, 70
18 percent. They think 40 percent to 60, 70 percent of
19 their peers smoke, even though only about five
20 percent of them smoke.

21 So we draw those graphs and then -- and then
22 show them that only five percent smoke. And this has
23 occurred over and over again.

24 Q. Professor Perry, do friends or peers have an
25 effect on youth smoking?

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1 A. Yes, they do. If a best friend smokes, for
2 example, that can be a very powerful influence
3 because the best friend is -- is -- is an important
4 role model.

5 Q. In your early research, what were your views on
6 the impact of peers on youth smoking?

7 A. In my early research I thought peers were the
8 most potent influence on smoking.

9 Q. And what are your opinions today?

10 A. Well, I still think peers are an important
11 influence, that peers influence each other. But
12 peers in turn are responding to influences from the
13 larger social environment. So peers influence each
14 other, but they are learning from the larger social
15 environment. For example, smoking didn't -- wasn't
16 invented in the peer group, and these peers don't --
17 peer groups don't operate in a vacuum. We could
18 probably think of peers best as conduits for the
19 larger social environment.

20 Q. Can advertising be one of the influences that
21 affects peers?

22 A. Yes, it can be. And as we'll see later in the

23 tobacco industry documents, advertisements --
24 advertising actually targeted the peer group.
25 Q. What about parents who smoke? We saw earlier a
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1 reference to that in the Surgeon General's report.
2 Are parents an influence on children smoking?
3 A. Well parents, of course, are -- are an influence
4 on their children, but over time, as the research has
5 gone -- gone on, we found that they're not as strong
6 an influence as we once thought they were. That's
7 why we didn't put the X in the Surgeon General's
8 report. There were reports that went both ways, you
9 know, that parents did influence and parents didn't
10 influence. The research was pretty mixed on that.
11 Q. And why aren't parents a stronger influence?
12 Why is that research mixed?
13 A. Well parents are clearly important role models
14 for their children and for -- and -- and for their
15 adolescent children, but parents who smoke not only
16 model smoking, but they model the consequences of
17 smoking. So a parent might be thinking about
18 quitting or might have actually tried to quit and had
19 difficulty quitting, or a parent might be having
20 health problems, or an adolescent might see the
21 parent having these problems, or they might not
22 like -- the adolescent might not like the smoke or --
23 or, you know, the ashes or something related to that.
24 So the adolescent is very close to the parent, not
25 only sees the parent modeling smoking, but also sees
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1 them modeling the consequences of smoking.
2 For adolescents, they perceive fewer negative
3 consequences when they see their peers smoking. And
4 there are no negative consequences displayed in
5 cigarette advertisements.
6 Q. Moving from the environment of adolescents, the
7 world they live in, can we turn to the developmental
8 stage of adolescence. Is this a factor in youth
9 smoking?
10 A. Yes. Adolescents are at a particularly
11 vulnerable or susceptible stage of development in
12 their lives. This means that they're vulnerable or
13 susceptible to influences that match their
14 developmental stage.
15 Q. Would you turn in book two to Exhibit 26067. Is
16 this an exhibit prepared under your direction?
17 A. Yes, this is an exhibit I prepared myself.
18 Q. And does it describe adolescent developmental
19 changes?
20 A. Yes, it does.
21 Q. Would it be helpful to illustrate your
22 testimony?
23 A. Yes, it would be.
24 MS. WALBURN: Your Honor, we would offer
25 Trial Exhibit 26067 for illustrative purposes.
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1 MR. WEBER: No objection, Your Honor.

2 THE COURT: Court will receive 26067 for
3 illustrative purposes.

4 BY MS. WALBURN:

5 Q. Using this chart, Professor Perry, can you
6 describe adolescent developmental changes.

7 A. Yes. The changes that go on during adolescence
8 are really profound changes. This is a time of great
9 change in -- in a person's life. There are three
10 major categories, primary changes that occur during
11 this time.

12 The first changes are physical changes, and
13 during adolescence, as the adolescent grows, there's
14 rapid growth starting usually during early
15 adolescence, and they reach their adult height
16 generally by the end of adolescence. They go through
17 puberty, there are hormonal changes, and it's the
18 beginning of their reproductive capability.

19 The second kind of changes are cognitive
20 changes, and these are almost as dramatic as the
21 physical changes in the adolescent. The adolescent
22 moves from being a concrete here-and-now kind of
23 thinker to being an abstract cause/effect thinker
24 over the course of adolescence, early, middle to late
25 adolescence. During early adolescence and middle

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1 adolescence they're primarily concrete thinkers; that
2 means that they are capable of thinking about what
3 they can see, feel, touch. That's what they can
4 think about. They can't comprehend things that are
5 abstract, such as the future, so they can't
6 comprehend the consequences of their behavior,
7 particularly the long-term consequences of their
8 behavior. And they can't comprehend abstract words
9 very well, like future or health, things that don't
10 have a concrete meaning to them.

11 The third major kind of change are social
12 changes, and during adolescence you come in as a
13 child and you go out of adolescence ready for your
14 adult role as partner, provider, and citizen, your
15 social roles of partner, provider and citizen. Now
16 during early adolescence you begin to sense these
17 changes, and that's the time where in life, during
18 early adolescence, where there's quite a low
19 self-image. It's also a time where -- where they
20 need a lot of privacy; a lot of closed doors start
21 happening during that time. During this time also
22 they perceive of themselves as on stage with
23 everybody watching them.

24 Q. Do these changes which you've been describing
25 occur in a predictable way in adolescents?

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1 A. No, and that's -- and that's very problematic.
2 So it's not that the physical, the cognitive, and the
3 social all kind of march along together. Not only do

4 they occur at different times, they occur at
5 different times for different people. So an
6 adolescent might look like they're 17, 18 years old,
7 they might only actually be 13 or 14 years old and
8 they may still be concrete thinkers. So the outside
9 world might treat them as an adult, but they don't
10 have the -- the capability, the capacity to be able
11 to -- to -- to deal with those expectations.

12 Q. And given the developmental stage of adolescence
13 and looking particularly at the cognitive stage, how,
14 if at all, does this affect the ability of
15 adolescents to make decisions about smoking?

16 A. Well there's -- there's two major things that
17 relate to their thinking capacity on smoking, and one
18 is is that they can't really comprehend the long-term
19 consequences of smoking. That is something in the
20 future. They cannot really comprehend it. That's
21 also part of the reason they're willing to take
22 risks, because they don't understand the consequences
23 of those risks.

24 They also really don't understand the connection
25 between smoking and health. For adolescents, health

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1 means that I'm not sick today, so if I'm not sick
2 today, I'm healthy. They -- so they can't really get
3 the connection between health in a -- in a general
4 sense. What it boils down to is that -- is
5 cognitively, in their thinking capacity, adolescents
6 really can't make an informed decision about smoking.

7 Q. Do you know from your review of tobacco company
8 documents the tobacco industry's position as to
9 whether adolescents are capable of making an informed
10 choice about smoking?

11 A. The tobacco industry documents were in agreement
12 that adolescents cannot make an informed decision
13 about smoking.

14 Q. Would you turn in book two to Exhibit 14449 and
15 14450. Exhibit 14449 is a Tobacco Institute
16 memorandum dated August 1st, 1979 from William
17 Kloeppfer, Jr., senior vice-president. Exhibit 14450
18 is the attachment to that cover memo.

19 Are these documents which you have reviewed in
20 this case?

21 A. Yes, they are.

22 Q. Do they form part of the basis of your opinions?

23 A. Yes, they do.

24 MS. WALBURN: Your Honor, we would offer
25 Exhibits 14449 and 14450.

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1 MR. WEBER: No objection, Your Honor.

2 THE COURT: Court will receive 14449,
3 14450.

4 BY MS. WALBURN:

5 Q. Exhibit 14449, again, is from William Kloeppfer,
6 Jr. to a number of individuals, and at the bottom of
7 the page it is copied to Horace Kornegay, who is or
8 was president of The Tobacco Institute.

9 Turning to the attachment, Exhibit 14450, this
10 is labeled "DRAFT," August 1st, 1979, and the first
11 paragraph states, "Smoking is an adult custom, one to
12 be decided on by mature, informed persons. The
13 controversies about smoking involve many aspects of
14 medical opinion and research findings which cannot be
15 fully understood by children and adolescents. Such
16 persons cannot, therefore, meet the requirements of
17 maturity and full knowledge."

18 Professor Perry, do you agree with that
19 statement with respect to children and adolescents?

20 A. Yes, I do.

21 Q. Have you seen public statements from the tobacco
22 companies which indicate the age at which young
23 people reach maturity and would be able to make an
24 informed decision about smoking?

25 A. Yes, I have.

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1 Q. Would you turn in book two to Exhibit 13957.
2 This is the transcript of a 20/20 telecast dated
3 October 20th, 1983, produced by Brown & Williamson in
4 this litigation, and it includes an interview with
5 Ann Browder of The Tobacco Institute.

6 Is this a document you have reviewed in this
7 case?

8 A. Yes, it is.

9 Q. Does it form part of the basis of your opinions?

10 A. Yes, it does.

11 MS. WALBURN: Your Honor, we would offer
12 Exhibit 13957.

13 MR. WEBER: Your Honor, I object to that.
14 It's a transcript of one of these television news
15 shows. It's got hearsay within hearsay. It's got
16 statements from all sorts of people who aren't
17 experts.

18 If you want to -- if the court would prefer to
19 discuss this at side-bar, I'd be glad to, but it
20 clearly -- unless there's one little line or
21 something they're going to offer, and only that, I
22 think it's entirely inappropriate.

23 MS. WALBURN: Your Honor, there was no
24 foundation objection made to this document. And in
25 addition, we are offering it for discrete segments

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1 which contain admissions from The Tobacco Institute
2 on behalf of the manufacturers.

3 THE COURT: Well can you just introduce the
4 segments that relate to admissions made by tobacco
5 companies?

6 MS. WALBURN: Certainly. We may need time
7 at a break to redact the document.

8 THE COURT: All right. I'll allow you to
9 inquire, and I'll hold my ruling until you delete the
10 other statements. Okay?

11 MR. WEBER: At this point it's just the
12 statement from The Tobacco Institute person then.
13 Is -- am I following that?

14 THE COURT: That's correct. Those -- she
15 may address those statements, but not the other
16 statements.
17 BY MS. WALBURN:
18 Q. If you turn in that document to Bates numbers
19 95250, and in the second half of that page it shows
20 Browder, who is Ann Browder from The Tobacco
21 Institute, stating, "We feel very strongly that
22 cigarette smoking is an adult custom that one should
23 not even consider until they've reached the age of
24 maturity."
25 And the reporter asks, "What's maturity?"
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1 And Browder replies, "Anyone over the age of
2 21."
3 Have you seen other similar public statements by
4 the tobacco companies?
5 A. Yes, I have.
6 Q. Would you turn to Exhibit 14554, also in book
7 two. Is this a document which you have reviewed in
8 this case?
9 A. Yes, it is.
10 Q. And does this form part of the basis of your
11 opinions?
12 A. Yes, it does.
13 Q. This is a press release from the -- or appears
14 to be a press release from The Tobacco Institute
15 titled "...ON YOUTH SMOKING, TOBACCO INDUSTRY
16 GUIDELINES."
17 MS. WALBURN: And Your Honor, we would
18 offer Exhibit 14554.
19 MR. WEBER: No objection to the document,
20 but I see nothing on it that says it's a press
21 release. But I have no objection to the admission of
22 it.
23 THE COURT: All right. Court will receive
24 14544.
25 MR. WEBER: I think it was 554, Your Honor.
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1 I may be --
2 MS. WALBURN: It is --
3 THE COURT: 554, is it?
4 MS. WALBURN: Yes, Your Honor.
5 THE COURT: The record should show it's
6 14554.
7 BY MS. WALBURN:
8 Q. Again, this has The Tobacco Institute on the
9 left -- upper left-hand corner, it's titled "...ON
10 YOUTH SMOKING, TOBACCO INDUSTRY GUIDELINES."
11 The first paragraph reads, "Long holding the
12 view that smoking is for adults who choose to
13 smoke -- and an activity that should not be engaged
14 in by youth -- the tobacco industry has taken
15 measures to address public concerns about youth
16 smoking."
17 Looking, Professor Perry, at that first
18 paragraph, that uses the term "youth." Is there any

19 age identified in that first paragraph with respect
20 to the term "youth?"
21 A. There is no age in the paragraph, but in the
22 bullet point the age is 21.
23 Q. The first bullet point reads, "Do not advertise
24 in publications directed primarily to persons under
25 21." Is that one of the bullet points --

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1 A. Yes.
2 Q. -- which you were referencing?
3 The second bullet point states, "Do not use
4 models in cigarette advertisements who are, or appear
5 to be, under 25."
6 A. Yes.
7 Q. The next bullet point states, "Do not distribute
8 cigarette samples to persons under age 21?"
9 A. Yes.
10 Q. And then moving down the page to "Conduct no
11 mail distribution" -- not quite so far. The second
12 bullet point in that section, "Conduct no mail
13 distribution to cigarette product samples without
14 written, signed certification that the addressee is
15 21 or older, a smoker and wishes to receive a product
16 sample."
17 A. Yes.
18 Q. And then moving down the page to the third
19 bullet point from the bottom, "Conduct no other
20 distribution of non-tobacco premium items bearing the
21 cigarette brand names, logos, et cetera, except with
22 the purchase of a package or carton of cigarettes to
23 persons 21 or older."

24 What is the significance --

25 MR. WEBER: Your Honor, I may have missed
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1 that, but I think there was a misread. I don't think
2 the "or" in the last line was read.

3 THE COURT: That's correct. You'll have to
4 reread that, counsel.

5 Q. "Conduct no other distribution of non-tobacco
6 premium items bearing the cigarette brand names,
7 logos, et cetera, except with the purchase of a
8 package or carton of cigarettes or to persons 21 or
9 older."

10 Do you see that, Professor Perry?

11 A. Yes, I do.

12 Q. And what is the significance of these
13 statements?

14 A. That The Tobacco Institute considers the age 21
15 to be the age where it's appropriate to -- for their
16 advertising and promotional activities, 21 and older.

17 Q. Were there other documents where the tobacco
18 industry publicly stated that they should not market
19 to young people under the age of 21?

20 A. Yes, there were.

21 Q. Would you turn in book two to Exhibit 13645.
22 This is a May 4th, 1979 letter from C. I. McCarty,
23 the chairman of Brown & Williamson Tobacco

24 Corporation, to Joseph Califano, Secretary of Health,
25 Education & Welfare.

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1 Is this a document which you have reviewed in
2 this case?

3 A. Yes, it is.

4 Q. Does this form part of the basis of your
5 opinions?

6 A. Yes, it does.

7 MS. WALBURN: Your Honor, we would offer
8 Exhibit 13645.

9 MR. WEBER: No objection, Your Honor.

10 THE COURT: Court will receive 13645.

11 BY MS. WALBURN:

12 Q. This document is a little bit difficult to read,
13 but on the very top you can see the logo of Brown &
14 Williamson Tobacco Corporation, and in the left-hand
15 margin the name C. I. McCarty, Chairman, the date May
16 4th, 1979, and in the bottom left-hand corner, this
17 is addressed to Mr. Joseph A. Califano, Jr., the
18 Secretary of Health, Education & Welfare, Washington,
19 D.C.

20 The first paragraph of this letter states:

21 "Dear Mr. Califano:

22 "Because of our policy against advertising or in
23 any way promoting the sale of cigarettes to persons
24 under 21, Brown & Williamson does not have at hand
25 the research data and other information necessary to

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1 a responsible analysis of the suggestion made in your
2 letter of April 26."

3 According to this document, Professor Perry,
4 what was the public representation of Brown &
5 Williamson to the government regarding marketing to
6 young people age 21?

7 A. That they were against that.

8 Q. And age 21, what stage of adolescence would that
9 be?

10 A. That would be at the end of adolescence.

11 Q. Looking again at that first paragraph, the
12 chairman of Brown & Williamson states that the
13 company does not have research data on hand, and he
14 goes on to say in the second paragraph, "I should
15 appreciate it, therefore, if you would send us the
16 National Institute of Education survey, the sources
17 for the data on smoking by 19-year-olds and subteens
18 and any other material you think pertinent so we can
19 make an intelligent response to your specific
20 suggestions."

21 Based on your review of Brown & Williamson
22 documents in this litigation, did Brown & Williamson
23 have information on smoking by teen-agers prior to
24 the time this letter was written?

25 MR. WEBER: Objection, Your Honor, the
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1 letter refers to another letter that made certain
2 requests. Obviously, we can't judge what data they
3 had that was responsive unless their requests are
4 also specified.

5 THE COURT: Well yes, that's true, except
6 that wasn't the question.

7 MR. WEBER: Well I'm overruled then>, I --
8 My objection was that you can't compare what
9 they had and what was being referred to here unless
10 you know what was referred to in the first paragraph
11 as to the inquiry from the secretary.

12 THE COURT: Okay. Well that may be
13 relevant to know, but that wasn't the question that
14 was asked. And you may answer the question.

15 A. Could you repeat it?

16 Q. Sure.

17 Based on your review of Brown & Williamson
18 documents in this litigation, did Brown & Williamson
19 have information on smoking by teen-agers prior to
20 the time this letter was written?

21 A. Yes. They regularly reported information on 16-
22 to 25-year-olds, which would include 19-year-olds.

23 Q. Professor Perry, based on your experience and
24 research, if an advertisement is directed to an
25 adolescent age 18, what effect, if any, would that

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1 have on an adolescent under age 18?

2 A. Well at age --

3 Age 18 isn't any magical age. That is, when you
4 turn age 18, nothing really magical happens. In
5 fact, most people when they turn age 18 are still in
6 high school, so that their friends and peers may also
7 be age 18, but they may also be age 17, age 16, age
8 15. So an advertisement aimed at 18-year-olds is
9 very likely to also be appealing to a 17-year-old and
10 a 16-year-old, a 15-year-old. There's no really
11 magic -- magic thing about turning age 18.

12 Q. And what, if any, is the significance of that?

13 A. That you really can't just target one particular
14 age group, one particular age.

15 Q. Going back to the developmental stages occurring
16 in adolescence, is there something called
17 developmental tasks?

18 A. Yes, there are. We talked about those three
19 major developmental changes that occur during
20 adolescence, and those changes have a purpose, and
21 those -- and those purposes are called developmental
22 tasks. It's what an adolescent is supposed to
23 accomplish during the stage of adolescence.

24 MS. WALBURN: May I approach, Your Honor?

25 Q. Showing you what has been marked as Exhibit

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1 30238, is this a chart that was developed under your
2 direction?

3 A. Yes, it was.

4 Q. And does this explain the developmental tasks of

5 adolescence?
6 A. Yes, it does.
7 Q. Would it be helpful in aiding your testimony?
8 A. Yes, it would be.
9 MS. WALBURN: Your Honor, we would offer
10 Exhibit 30238 for illustrative purposes.
11 MR. WEBER: No objection, Your Honor.
12 THE COURT: The court will receive 30238
13 for illustrative purposes.
14 BY MR. WALBURN:
15 Q. And with the court's permission, Professor
16 Perry, could you come down and explain this chart.
17 A. Most scientists agree that there are four to six
18 developmental tasks during adolescence, and what I've
19 tried to do with this chart is not only label these
20 developmental tasks, but also give you a kind of
21 typical question that an adolescent might ask that
22 illustrates each task so you -- you kind of see it
23 from the adolescent's point of view.
24 The first developmental task is independence,
25 and what this means for the adolescent is that they

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1 want more self-directed activity, they want to be
2 able to engage in more self-directed activity, take
3 part in family decisions, make their own decisions.
4 You'll often hear an adolescent say, "Can I please
5 make my own decisions?" even when they might not be
6 particularly wise ones like "Why can't I get a
7 tattoo?"
8 The second developmental task is attachment to
9 parents, and during the course of adolescence, the
10 relationship between children and their parents
11 changes to one that is more appropriate in our
12 culture for parents and adult children, so there's a
13 change during that. During early adolescence you see
14 this really -- it's very pronounced, and that some
15 days the adolescent wants to be treated like a child
16 and the next day they want to be treated like an
17 adult. And the parent can get caught in that
18 confusion. The child -- the adolescent wants to be
19 both attached and detached. You would hear an
20 adolescent say -- and this is actually the name of a
21 book on adolescence -- "Can you leave me alone?" But
22 then a few moments later or a few seconds later, they
23 will say, "But first, will you drive me to the mall?"
24 So they're both attached and detached.

25 The third developmental task is intimacy and

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1 peers. And during adolescence there's an increased
2 capacity for friendship; that is, they start out by
3 forming same gender cliques which form into groups
4 and then the peer group, which is a precursor to --
5 to dating and their social roles as adults. During
6 early adolescence, conformity to peers, wanting to
7 become part of a peer group, is at its
8 highest -- that's during early adolescence, 11 to
9 14 -- and adolescents often worry about if they're

10 fitting into the peer group. They say they wonder
11 "Do I fit in? Do they like me?"

12 The fourth task is achievement, and this has to
13 do with getting ready for their adult role as
14 provider, either in the work place or at home.
15 They're getting ready for that role. And they ask
16 themselves, "What do I want to become? In what areas
17 will I be successful?"

18 The fifth task is identity, and for this task
19 they're putting together all these changes going on
20 in themselves and they're trying to get a coherent,
21 a -- a clear picture of themselves. And often
22 they'll try on different roles, particularly during
23 early adolescence. It's during this particular time,
24 too, early adolescence, where their self-image is
25 really at the lowest in the whole life cycle, and

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1 they ask themselves, "Am I normal? Who am I?" Those
2 are the kinds of questions that they're asking.

3 The final developmental task is sexuality. They
4 need to learn about new social roles and gender
5 identity as kind of a way to -- their precursor to
6 finding a partner, so they're learning all of these
7 new things. In early adolescence, how this shows up
8 is in crushes; they get crushes on celebrities or
9 even billboard heroes. These crushes are generally
10 discarded when real relationships emerge and dating
11 emerges. And adolescents really spend a lot of time
12 worrying about this question: "Am I attractive?"

13 So these are the six major developmental tasks
14 of adolescence. This is what they're supposed to
15 accomplish during this time. These -- these are the
16 driving force for this stage of life.

17 Q. Professor Perry, are youth risk-takers?

18 A. Well youth can take risks; that is, they can
19 engage in behaviors that might compromise their
20 health in order to accomplish these developmental
21 tasks. So they might take risks to develop -- to
22 accomplish one of these developmental tasks and
23 because they can't comprehend the consequences of
24 their behavior.

25 Q. And how, if at all, would that affect their

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1 reaction to outside influences?

2 A. Well they're going to be --

3 Adolescents will be very susceptible to outside
4 influences that demonstrate or teach them how to
5 accomplish -- to teach them how to accomplish these
6 developmental tasks.

7 Q. Thank you. You can return to the stand.

8 From your review of the tobacco company
9 documents, did you come to learn whether or not the
10 tobacco companies also studied the various aspects of
11 adolescent development which you have been describing
12 here?

13 A. Yes, they did.

14 Q. And what if anything did the tobacco companies

15 do with their knowledge of adolescent development?
16 A. The tobacco companies understand these major
17 developmental tasks and they exploited these
18 developmental tasks. The major themes of advertising
19 and promotion correspond to these developmental
20 tasks. In a way, advertising and promotions became a
21 way to teach adolescents how to accomplish these
22 tasks, even an easy way to accomplish these tasks.
23 Q. Are there tobacco company documents that discuss
24 the themes of independence and attachment?
25 A. Yes, there are.

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1 Q. Would you turn in book one to Exhibit 12579.
2 This is a document which you referenced earlier in
3 your testimony titled "YOUNGER ADULT SMOKERS:
4 STRATEGIES AND OPPORTUNITIES" from R. J. Reynolds.
5 Would you turn to Bates number 8486. And in
6 this section, Reynolds is discussing Marlboro and
7 states, starting in the third bullet point there,
8 "Marlboro's intensity fit the mindset of younger
9 adults in the 1960s.
10 "Marlboro's positioning was in tune with younger
11 adult smokers' enduring want to express their
12 maturity and independence through smoking. (The
13 Marlboro cowboy is always shown as an a mature, even
14 older man.)
15 "Marlboro acquired younger adult smokers than
16 WINSTON and, by the late 1960's, this meant the Baby
17 Bubble, the largest cohort of people, and smokers, in
18 history."
19 Professor, what is the significance of those
20 statements?
21 A. Well Reynolds -- R. J. Reynolds was looking at
22 Marlboro and its success with the baby bubble or baby
23 boomers during the 1960s and talking about that
24 Marlboro's position was in tune with -- with young
25 people by presenting a very independent, mature

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1 person in their advertising.
2 Q. Are there internal tobacco company documents
3 which discuss the importance of peers in the decision
4 to smoke?
5 A. Yes, there are.
6 Q. Would you turn to Exhibit 12761 in book one.
7 This is an RJR document dated March 12th, 1986, to
8 Mr. D. N. Iauco, and the title is "CAMEL New
9 Advertising Campaign Development."
10 Is this a document which you reviewed in this
11 case?
12 A. Yes, it is.
13 Q. Does this form part of the basis of your
14 opinions?
15 A. Yes, it does.
16 MS. WALBURN: Your Honor, we would offer
17 Exhibit 12761.
18 MR. WEBER: No objection, Your Honor.
19 THE COURT: Court will receive 12761.

20 BY MS. WALBURN:

21 Q. Looking at paragraph two on this first page
22 titled "ADVERTISING OBJECTIVE," this states,
23 "Overall, CAMEL advertising will be directed toward
24 using peer acceptance/influence to provide the
25 motivation for target smokers to select CAMEL.

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1 Specifically, advertising will be developed with the
2 objective of convincing target smokers that by
3 selecting CAMEL as their usual brand they will
4 project an image that will enhance their acceptance
5 among their peers."

6 And if you turn to page Bates No. 9241 in that
7 document, under the section titled "Psychological
8 Motivation," the document goes on to state,
9 "Aspiration to an image which will make target
10 smokers cool/accepted by their peers.

11 "Rationale.

12 "Aspiration to be perceived as a cool/member of
13 the in-group is one of the strongest influences
14 affecting the behavior of younger adult smokers.

15 "Personality attributes respected by target
16 smokers and inherent in their definition of cool
17 include a degree of rebellion or non-conformity,
18 along with the self-confidence to remain in control
19 of the somewhat risky, exciting lifestyle associated
20 with this -- with these characteristics.

21 "CAMEL'S non-conformist, self-confident user
22 heritage, in conjunction with its perception as a
23 unique, different and one-of-a-kind brand, makes
24 CAMEL the only brand which can credibly execute this
25 strategy.

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1 "This approach will capitalize on the ubiquitous
2 nature of Marlboro as repositioning it as the epitome
3 of conformity, versus CAMEL the smoke of the
4 cool/in-group."

5 Q. Professor Perry, how does this, if at all,
6 relate to the developmental tasks which you
7 discussed?

8 A. Well in this document they are talking about an
9 advertising campaign, and it's quite clear that they
10 are going to be targeting the peer group, using the
11 peers as a conduit for their advertising message to
12 get new smokers.

13 Q. And at what age do people care most about being
14 a member of the cool in-group?

15 A. As I said -- testified just earlier, the peak
16 age for peer conformity, wanting to be part of a peer
17 group, is early adolescence, age 11 to 14. By the
18 time you're an older adolescent, you're much more
19 interested in dating and -- and not -- not as
20 interested in -- or not as influenced by the peer
21 group.

22 Q. In the first paragraph that's on the screen
23 right now it references, in the second-to-last line,
24 the somewhat risky exciting lifestyle. What's the

25 significance of that statement?

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1 A. Well, R. J. Reynolds realized that adolescents
2 take risks, they might take risks to -- during this
3 stage of life, and so they are going to exploit that,
4 that they take risks, use that also as part of their
5 advertising campaign.

6 Q. Can you turn back to the first page of this
7 document. In that first paragraph titled "TARGET
8 AUDIENCE," do you see in that first sentence where it
9 references a target group of 18 to 24 male smokers?

10 A. Yes, I do.

11 Q. I'd like to read the last sentence of that
12 paragraph.

13 "However, recognizing the volume potential
14 associated with advertising which is broadbased in
15 appeal, the creative exploratory will emphasize
16 approaches which employ universal cues and symbols
17 having motivational value outside of the prime
18 prospect group as well."

19 What is the significance of that statement?

20 A. Well they saw that this advertising campaign
21 would be also appealing outside their prime prospect
22 group; that is, to people under the age of 18, and as
23 we saw, since they're targeting the peer group,
24 that's also consistent with their advertising
25 strategy.

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1 MR. WEBER: Your Honor, I'd move to strike
2 that answer as being based on speculation with
3 respect to the prime group being those under.
4 There's no information as to whether it was under or
5 older or whatever. It's pure speculation.

6 THE COURT: Well I think she can give her
7 opinion as an expert.

8 BY MS. WALBURN:

9 Q. Professor Perry, this document was written in
10 1986. Do you know when RJR introduced the Joe Camel
11 cartoon campaign?

12 A. It was officially -- officially started in 1988.

13 Q. Would you turn in book one to Exhibit 12934.

14 This is the 1987 document produced by Reynolds titled
15 "CAMEL ADVERTISING DEVELOPMENT 'WHITE PAPER.'"

16 Is this a document which you reviewed in this
17 case?

18 A. Yes, it is.

19 Q. And does this document form part of the basis of
20 your opinion?

21 A. Yes, it does.

22 MS. WALBURN: Your Honor, we would offer
23 Exhibit 12934.

24 MR. WEBER: No objection, Your Honor.

25 THE COURT: Court will receive 12934.

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1 BY MS. WALBURN:
2 Q. And this is a title page, "CAMEL ADVERTISING
3 DEVELOPMENT 'WHITE PAPER.'" .
4 Would you turn to page four of this document.
5 And looking at the box at the bottom of the page,
6 this states, "The advertising will position CAMEL as
7 an authentic brand for smokers who are admired and
8 respected by their peers because their attitudes and
9 lifestyles distinguish them as individuals who
10 challenge convention and stand tall."
11 Professor Perry, how, if at all, does this
12 statement relate to the developmental tasks which you
13 have been describing?
14 A. Well again, this shows that their advertising
15 is -- is being -- the -- is being aimed at the peer
16 group. In this particular box, though, they're
17 talking about an authentic brand for smokers who are
18 admired and respected by their peers, and that is
19 almost the exact language we use when we have our
20 peer leaders elected in our program. We ask them to
21 write down the names of two boys and two girls that
22 you admire and respect, or like and respect, and
23 that's how we choose our peer leaders. So they are
24 saying you could be a peer leader as well.
25 Now this peer-leader approach that we use works
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7000

1 in the sixth or seventh grade, it does not work in
2 the ninth or 10th grade.
3 Q. Would you turn in book two, your other book, to
4 Exhibit 15780. Is this an advertisement which you
5 have reviewed in this case?
6 A. Yes, it is.
7 Q. And does this form part of the basis of your
8 opinion?
9 A. Yes, it does.
10 MS. WALBURN: Your Honor, we would offer
11 Exhibit 15780.
12 MR. WEBER: No objection.
13 THE COURT: Court will receive 15780.

14 BY MS. WALBURN:
15 Q. Can you describe this advertisement and how, if
16 at all, it relates to the developmental tasks you
17 have discussed.
18 A. Yes. This is a Joe Camel advertisement, and you
19 can see Joe Camel with his peer group. He's part of
20 the in-group. And you can see that there's some card
21 playing going on; it's slightly risky. But primarily
22 this is an advertisement that would appeal to -- to
23 wanting to be part of a peer -- a peer group. An
24 adolescent would see smoking as associated with the
25 peer group.

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7001

1 Q. Would you turn in book one, the other book, to
2 Exhibit 9324. Is this also an advertisement which
3 you have reviewed in this case?
4 A. Yes, it is.
5 Q. Does this form part of the basis of your

6 opinion?
7 A. Yes, it does.
8 MS. WALBURN: Your Honor, we would offer
9 Exhibit 9324.
10 MR. WEBER: No objection, Your Honor.
11 THE COURT: Court will receive 9324.
12 BY MS. WALBURN:
13 Q. How, if at all, does this advertisement relate
14 to the developmental tasks you have discussed?
15 A. Well this advertisement, I think, also -- this
16 advertisement also appeals to the peer group. Joe
17 Camel is part of the club, he's part of Club Camel.
18 In this ad Joe Camel -- Joe Camel is looking
19 particularly self-confident and might be admired and
20 respected. This is Joe Camel as the peer leader.
21 Q. Did you also find in your review of tobacco
22 company documents documents that discuss adolescent's
23 identity or self-image?
24 A. Yes, I did.
25 Q. Would you turn in the third book which you have
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7002

1 to Exhibit 12989. This is a 1989 document produced
2 by R. J. Reynolds titled "CAMEL Y&R ORIENTATION." Is
3 this a document you have reviewed in this case?
4 A. Yes, it is.
5 Q. Does this form part of the basis of your
6 opinions?
7 A. Yes, it does.
8 MS. WALBURN: Your Honor, we would offer
9 Exhibit 12989.
10 MR. WEBER: No objection, Your Honor.
11 THE COURT: Court will receive 12989.
12 BY MS. WALBURN:
13 Q. Again, this is titled "CAMEL Y&R ORIENTATION."
14 Do you know, Professor Perry, what Y&R stands
15 for?
16 A. Yes, Young & Rubicam Advertising Agency.
17 Q. And could you generally describe this document.
18 A. It's background information on developing a
19 younger adult advertising campaign.
20 Q. Would you turn to Bates number 1677. This page
21 states "FUBYAS SOCIAL GROUP SPECTRUM."
22 First of all, do you know from your review of
23 documents from FUBYAS stands for?
24 A. Yes, it means First Usual Brand Young Adult
25 Smoker.

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7003

1 Q. And from your review of documents and research,
2 at what age do smokers generally choose their first
3 brand?
4 A. Most smokers choose their first brands when
5 they're under age 18.
6 Q. This page goes on to state, "With regard to
7 'social group' participation, FUBYAS tend to live in
8 a movie
9 "They know the roles
10 "They know the script

11 "They know the costumes
12 "They know the props
13 "We want to supply one of the props -- their
14 brand of cigarettes."
15 Professor Perry, at what age do people generally
16 tend to live in a movie?
17 A. Well as I testified before, during early
18 adolescence, more than in any other -- any other time
19 of life, a young adolescent feels like they're on a
20 stage and everyone is watching them.
21 Q. Were there other documents which you reviewed
22 which discussed displaying -- displaying particular
23 images in advertising which would be appealing to
24 youth?
25 A. Yes, image was often discussed in the -- in the
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7004

1 document.
2 Q. Were there also documents which discussed the
3 theme of sexuality in advertisement?
4 A. Yes, there were.
5 Q. And are there advertisements which relate to
6 this theme?
7 A. Yes, there are.
8 Q. Is one of those a B&W advertisement for Kool
9 called "Lady be Kool?"
10 A. Yes, it is.
11 MS. WALBURN: Your Honor, at this point we
12 would offer a video of this advertisement. It is
13 Exhibit 20929.
14 MR. WEBER: Your Honor, my note on that
15 says that there were -- plaintiffs have produced five
16 videos, separate videotapes. My only question is
17 whether you've spliced them together, or are they in
18 their original form?
19 MS. WALBURN: These are discrete
20 advertisements. The advertisements were produced to
21 us by some of the defendants with multiple ads on a
22 single tape, and we've taken particular ads for
23 displaying at trial. We gave defendants notice of
24 how we had edited the tapes and provided defendants
25 with the exact tapes that we would be playing today
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7005

1 last week.
2 THE COURT: Okay. Well I'm not sure that
3 answers his inquiry.
4 MR. WEBER: I guess all I'm concerned
5 about, Your Honor, obviously if it's an
6 advertisement, they can put it in evidence. I just
7 want to know if they're running a whole ad or pieces
8 of an ad and how they've spliced it. If it's a whole
9 ad, I have no objection whatsoever.
10 MS. WALBURN: My understanding is it's the
11 entire ad.
12 THE COURT: It's the entire ad?
13 MS. WALBURN: Yes.
14 THE COURT: Okay, let's go.
15 (Discussion off the record.)

16 THE COURT: All right, counsel.
17 MR. WEBER: Could we for the record have a
18 date on this, Your Honor?
19 MS. WALBURN: Yes. The information we
20 received from Brown & Williamson was approximately
21 1970.
22 THE COURT: Go ahead.
23 (Videotape played.)
24 BY MS. WALBURN:
25 Q. Professor Perry, how, if at all, did that
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7006

1 advertisement relate to the developmental tasks which
2 you have discussed here?
3 A. Well that advertisement clearly showed a very
4 attractive young woman out on her own, so relating to
5 independence, who was clearly attractive to the
6 opposite sex. So for an adolescent, they would
7 associate smoking with being independent -- being
8 independent and being sexually attractive.
9 Q. Would you turn in book two to three related
10 exhibits, an advertisement which ran as one, Exhibits
11 15650, 15651 and 15652.
12 Is this an advertisement which you have reviewed
13 in this case?
14 A. Yes, it is.
15 Q. And does this advertisement form part of the
16 basis of your opinion?
17 A. Yes, it does.
18 Q. And I'll represent that this is an advertisement
19 that ran in 1989.
20 MS. WALBURN: And we would offer Exhibits
21 15650, 15651 and 15652.
22 MR. WEBER: No objection, Your Honor.
23 THE COURT: Court will receive 15650,
24 15651, 15652.
25 BY MS. WALBURN:

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7007

1 Q. And this is a cover page of the ad, states
2 "Bored? Lonely? Restless? What you need is..."
3 And then moving to Exhibit 15651, shows the
4 Camel, "Smooth character," and the left-hand part of
5 the ad states, "Foolproof dating advice, Smooth Move
6 number 325," and moving to the right-hand side of the
7 page, this states, "How to impress someone at the
8 beach, Smooth Move 334." Number one, "Run into the
9 water, grab someone and drag her back to the shore,
10 as if you've saved her from drowning. The more she
11 kicks and screams, the better."
12 Number two, "If you're overweight, lie on a
13 towel with vertical stripes."
14 Number three, "If you're under weight, lie on a
15 towel with horizontal stripes."
16 Number four, "Always have plenty of Camels ready
17 when the beach party begins."
18 And turning to 15652, this is titled "How to get
19 a FREE pack even if you don't like to redeem coupons,
20 Smooth Move number 437.

21 "1. Ask your best friend to redeem it.
22 "2. Ask a kind-looking stranger to redeem it.
23 "3. Ask a good-looking stranger to redeem it.
24 And "4. Offer each a Camel and start a warm,
25 wonderful friendship."

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7008

1 Professor Perry, what is the significance, if
2 any, to the developmental tasks you have described
3 with this advertising?
4 A. Well this advertisement suggests, certainly the
5 first one, how to be attractive, or some smooth moves
6 is the kind of campaign name, how to, you know, make
7 advances or moves with someone of the opposite sex.
8 The advertisement uses humor as a way of doing this,
9 and in that way, I think, it hits on sexuality, but
10 also is -- is kind of part of the peer group, that
11 that's what a cool person would do.
12 Q. Do you know how long this advertisement was run
13 by R. J. Reynolds?
14 A. Not very long.
15 Q. What happened to it?
16 A. They got complaints and so they -- they took --
17 they withdrew it.
18 Q. Were there other advertisements that you
19 reviewed which also had other images relevant to
20 youth?
21 A. Yes, there were.
22 Q. Was one of those an advertisement which ran in
23 the Flintstones TV show back in 1960 and 1962?
24 A. Yes, it was.
25 Q. Is that advertisement part of the basis of your

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1 opinion?
2 A. Yes, it is.
3 MS. WALBURN: Your Honor, this is Exhibit
4 20866, and we would offer this.
5 MR. WEBER: 20866?
6 MS. WALBURN: Yes.
7 MR. WEBER: Just the same issue, no
8 objection as long as it's an entire ad.
9 MS. WALBURN: Yes, this is actually two
10 advertisements run in their entirety.
11 THE COURT: Okay. All right, the court
12 will receive 20866.
13 (Videotape played.)
14 BY MS. WALBURN:
15 Q. Professor Perry, what is the significance of
16 these Flintstone commercials for Winston?
17 A. Flintstones was a popular family television
18 show, and what these -- these advertisements, which
19 kind of blended in with the credits to the show,
20 would for a young person make smoking seem a normal
21 part of everyday life.
22 Q. Did you also review advertisements for Winston
23 that ran on the Beverly Hillbillies show in the
24 1964-1965 time period?
25 A. Yes, I did.

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7010

1 Q. And is that an advertisement which forms part of
2 the basis of your opinions?

3 A. Yes, it does.

4 MS. WALBURN: Your Honor, the Beverly
5 Hillbillies ad is Exhibit 20877, and we would offer
6 this into evidence.

7 MR. WEBER: Assuming we're running whole
8 ads, no objection, Your Honor.

9 THE COURT: Court will receive 20877.
10 (Videotape played.)

11 BY MS. WALBURN:

12 Q. Professor Perry, what is the significance of the
13 advertisement we just saw on the Beverly Hillbillies?

14 A. Well the Beverly Hillbillies were also a very
15 popular show in the -- in the 1960s, and once again,
16 it blended the show and the introduction of the show
17 with the advertisement for Winston. So for a young
18 person, they would, again, begin to -- or see smoking
19 or Winston as part of normal life. It was a usual
20 part of -- part of life, even in Beverly Hills.

21 Q. Do the advertising and promotional activities
22 which you have been discussing affect the stages of
23 smoking onset that you referenced earlier?

24 A. Yes, they do.

25 MS. WALBURN: Your Honor, may I approach?

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7011

1 THE COURT: Okay.

2 Q. Showing you Exhibit 30241, is this a chart which
3 was prepared under your supervision?

4 A. Yes, it was.

5 Q. And would this be helpful in aiding your
6 testimony?

7 A. Yes, it would be.

8 MS. WALBURN: Your Honor, we would offer
9 Exhibit 30241 for illustrative purposes.

10 MR. WEBER: No objection, Your Honor.

11 THE COURT: The court will receive 30241
12 for illustrative purposes.

13 BY MS. WALBURN:

14 Q. And with the court's permission, professor,
15 could you come down and explain this chart.

16 A. Well we saw in the Surgeon General's report
17 previously in this testimony the five different
18 stages of smoking onset, and what I've done with this
19 chart is show tobacco industry actions and how those
20 might influence these stages of smoking onset. And
21 I've identified four types of actions, and they could
22 really influence any of the stages, but I put them
23 where I think they -- they might be most influential.

24 Starting at the top, there's considerable
25 evidence that pervasive advertising and promotional

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1 activities create a sense of friendly familiarity

2 about smoking, that it's usual or normal or accepted
3 behavior. We saw that adolescents have a very high
4 exposure to advertising and promotional activity and
5 they perceive that a large percentage of people
6 smoke, a much larger percentage than actually do.

7 We just went through and showed how advertising
8 and promotional activities use the developmental
9 tasks. They use those themes such as independence or
10 the peer group or sexuality or identity. These are
11 the key motivating drives of adolescents, and these
12 advertising teams teach adolescents how to accomplish
13 these tasks. There is no other stage in life where
14 these tests -- these themes are more potent than
15 during adolescence. So advertising teaches young
16 people how -- a way to accomplish these tasks.

17 We saw in the documents that advertising, brand
18 advertising targets the peer group, that trying to
19 create peer conformity, a kind of bandwagon effect so
20 that peers will influence each other to continue to
21 smoke.

22 And finally, promotional activities, such as
23 giving away tickets or jackets or other kinds of --
24 of promotional items, reinforce you, or if you're
25 saving up those coupons, coupons will serve as an

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1 incentive to smoke, so you could keep smoking to save
2 up your coupons. So tobacco advertising and
3 promotional activities work in terms of getting
4 adolescents to smoke by making smoking normative,
5 usual, acceptable behavior. By making it functional
6 it serves a purpose for them, it's meaningful and
7 purposeful to them, by creating -- by making them a
8 part of the peer group and by actually rewarding them
9 for using -- for smoking cigarettes.

10 Q. Thank you. You can return to the stand.

11 THE COURT: Maybe we should take a recess
12 for lunch. Reconvene at 10 after 2:00.

13 THE CLERK: Court stands in recess to
14 reconvene 10 after 2:00.

15 (Recess taken.)
16
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7014

1 AFTERNOON SESSION.

2 THE CLERK: All rise. Court is again in
3 session.

4 (Jury enters the courtroom.)

5 THE CLERK: Please be seated.

6 THE COURT: Counsel.

7 MS. WALBURN: Thank you, Your Honor.
8 Good afternoon, ladies and gentlemen.
9 (Collective "Good afternoon.")
10 BY MS. WALBURN:
11 Q. Professor Perry, did the 1994 Surgeon General's
12 report reach any conclusion about the tobacco
13 companies' advertising and promotion activities?
14 A. Yes, it did.
15 Q. Could you turn to page 195 of the '94 Surgeon
16 General's report. Are those the five conclusions
17 reached by the Surgeon General in 1994?
18 A. Yes, they are.
19 Q. And could you please read the five conclusions.
20 A. Yes. The first conclusion is that "Young people
21 continue to be a strategically important market for
22 the tobacco industry."
23 Number two, "Young people are currently exposed
24 to cigarette messages through print media (including
25 outdoor billboards) and through promotional
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1 activities, such as sponsorship of sporting events
2 and public entertainment, point-of-sale displays, and
3 distribution of specialty items."
4 Number three, "Cigarette advertising uses images
5 rather than information to portray the attractiveness
6 and function of smoking. Human models and cartoon
7 characters in cigarette advertising convey
8 independence, health-fullness, adventure-seeking, and
9 youthful activities - themes correlated with the
10 psychosocial factors that appeal to young people."
11 The fourth one, "Cigarette advertisements
12 capitalize on the disparity between an ideal and
13 actual self-image and imply that smoking may close
14 the gap."
15 And the fifth one, "Cigarette advertising
16 appears to affect young people's perceptions of the
17 pervasiveness, image, and function of smoking. Since
18 misperceptions in these areas constitute psychosocial
19 risk factors for the initiation of smoking, cigarette
20 advertising appears to increase young people's risk
21 of smoking."
22 Q. Are your opinions today the same as they were
23 when the 1994 Surgeon General's report was written?
24 A. No, my opinions are -- are stronger than they
25 were back in 1994.

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1 Q. And why is that, professor?
2 A. Well the information that went into this report
3 was collected up through 1992 when most of the people
4 who wrote the report actually wrote their sections.
5 Some -- there's some data, a little bit of data from
6 1993, so we have about five more years of research on
7 the influence of tobacco advertising and promotion on
8 young people. And there were some limitations to
9 this report.
10 Q. Would you turn to page 188 of the report. This
11 is a section titled "Research on the effects of

12 cigarette advertising and promotional activities on
13 young people," and the introduction reads as follows:
14 "A substantial and growing body of scientific
15 literature has reported on young people's awareness
16 of, and attitudes about, cigarette advertising and
17 promotional activities. Research has also focused on
18 the effects of these activities on psychosocial risk
19 factors for beginning to smoke. Considered together,
20 these studies offer a compelling argument for the
21 mediated relationship of cigarette advertising and
22 adolescent smoking. To date, however, no
23 longitudinal study of the direct relationship of
24 cigarette advertising to smoking initiation has been
25 reported in the literature. This lack of definitive

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1 literature does not imply that a causal relationship
2 does not exist; rather, better quantification of
3 exposure, effect, and etiology is needed. Important
4 data from research conducted for the tobacco industry
5 are not available; such information would add
6 considerably to our knowledge."

7 Professor Perry, since the Surgeon General's
8 report was written, has there been additional
9 research published in this area?

10 A. Yes, there's been quite a bit of new research.
11 In fact, I think probably the most important research
12 in this area has been conducted in the 1990s.

13 Q. And since the Surgeon General report was written
14 and published, has there been disclosure of documents
15 from the tobacco industry relating to these issues?

16 A. Yes, but only in this case, in this lawsuit.

17 Q. Professor, can we turn to some of the research
18 that has been published since 1994 on youth smoking.

19 First of all, is there a specialized set of
20 research that deals with youth marketing issues as
21 opposed to other products than cigarettes?

22 A. Yes, there's a special literature that looks at
23 the influence of cigarette advertising and
24 promotional activities on youth smoking behavior.

25 Q. Would you turn in book one to Exhibit 4991.

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1 This is an article published on August 19th, 1994 by
2 the U.S. Centers for Disease Control in the Morbidity
3 and Mortality Weekly Report. Is this a reliable
4 article in a reliable publication?

5 A. Yes, it is.

6 Q. Does this form part of the basis of your
7 opinions?

8 A. Yes, it does.

9 MS. WALBURN: We would offer Exhibit 4991
10 under Rule 803(18).

11 MR. WEBER: No objection, Your Honor.

12 THE COURT: Court will receive 4991.

13 BY MS. WALBURN:

14 Q. The title of this study says "Changes in the
15 Cigarette Brand Preferences of Adolescent Smokers --
16 United States, 1989 through 1993."

17 Can you tell us what this article addresses.
18 A. Yes. This reports the outcomes of two studies
19 done, the Teen-age Attitudes and Practices Surveys
20 that were done in 1989 and 1993, and what this
21 report, research report deals with are adolescents'
22 brand preferences in 1989 and in 1993, and on the
23 changes in their brand preferences.

24 Q. The first paragraph of this study states,
25 "Approximately three million U.S. adolescents are
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1 smokers, and they smoke nearly one billion packs of
2 cigarettes each year. The average age at which
3 smokers try their first cigarette is 14 and a half
4 years, and approximately 70 percent of smokers become
5 regular smokers by age 18 years. Evaluating the
6 changes in the brand preferences of young smokers can
7 help identify factors that influence adolescents'
8 brand choice and may suggest smoking-prevention
9 strategies."

10 And then if you turn down to the bottom of that
11 page, starting on the last line, this study states,
12 "Marlboro, Camel, and Newport were the most
13 frequently purchased brands for 86 percent of the
14 adolescents."

15 Professor, who makes Marlboro cigarettes?

16 A. Philip Morris.

17 Q. And Camel cigarettes?

18 A. R. J. Reynolds.

19 Q. And Newport cigarettes?

20 A. Lorillard.

21 Q. Did this report correlate those three
22 best-selling brands with advertising?

23 A. Yes. What it said was that the three most --
24 three best-selling brands are the three most
25 advertised brands, the most money that's spent on

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1 advertising are for these three brands, and those are
2 the brands that under-age teen-agers smoke. And
3 that's not true for adults; adults don't smoke the
4 most advertised brands.

5 Q. Would you turn to page 580 on Table 2 of this
6 report. Can you explain what this chart depicts.

7 A. Yes. This chart shows on top the adolescents,
8 in this case they're defined as 12- to 18-year-olds,
9 their brand preferences among smokers in 1989, that's
10 the first column, and what rank they were in -- in
11 terms of brand preference, then their brand
12 preference in 1993 and the rank in brand preference
13 in 1993, and then any change in percent of brand
14 preference from 1989 to 1993.

15 The bottom chart does the same thing, but it's
16 for the whole -- it's for the whole market over --
17 over 18 years old, or 18 and over.

18 Q. So the bottom chart would include adults as
19 well?

20 A. Yes, that is adults.

21 Q. Looking at the top chart for adolescents ages 12

22 to 18, can you tell us what this shows for Marlboro
23 cigarettes.

24 A. In 1989, 68.7 percent, or almost 69 percent of
25 adolescents, smoked Marlboro. In 1993, 60 percent of

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1 adolescents smoked Marlboro cigarettes.

2 Q. And what was the rank of Marlboro in terms of
3 smoking among adolescents ages 13 to 14?

4 A. It was number one in 1989 and number one in
5 1993.

6 Q. Turning to the second brand reported on in the
7 table, Camel cigarettes, what percent of adolescents
8 ages 12 to 18 smoked Camels in 1989?

9 A. 8.1 percent of adolescents smoked Camels in
10 1989.

11 Q. And what was that percentage in 1993?

12 A. 13.3 percent smoked Camels in 1993.

13 Q. So the sales of Camels among 12- to 18-year-olds
14 rose between 1989 and 1993, according to this table?

15 A. Yes, it rose 5.2 percent.

16 Q. Are you aware of anything significant happening
17 in the marketplace between these years, 1989 and
18 1993, when sales of Camel cigarettes rose among
19 adolescents ages 12 to 18?

20 A. Yes, those were the years of the Joe Camel
21 campaign.

22 Q. And when did that campaign begin again?

23 A. 1988.

24 Q. Does this table, the second table, tell us
25 anything about what happens to Camel's share of the

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1 adult market in that same time period?

2 A. In 1989 the share of the adult market was 3.9
3 percent for Camel in 1989, and it was again 3.9
4 percent in 1993, so there was no market share
5 increase among adults between 1989 and 1993.

6 Q. And turning back to the first chart for
7 adolescents and the Newport brand, the third
8 best-selling brand among adolescents, can you tell us
9 how Newport sold among adolescents in 1989 and 1993?

10 A. Yes. 8.2 percent of adolescents smoked Newport
11 in 1989 and 12.7 percent smoked Newport in 1993, so
12 there was an increase in Newport between '89 and '93.

13 Q. Could you turn in book two to Exhibit 26063.
14 This is the Schooler article which you discussed
15 earlier today. Is this another article that was
16 published after the 1994 Surgeon General's report?

17 A. Yes, this was published in 1996.

18 Q. And the title of this article, which was
19 published in the American Journal of Public Health,
20 is "Seventh Graders' Self-Reported Exposure to
21 Cigarette Marketing and Its Relationship to Their
22 Smoking Behavior."

23 Turning in the left-hand column to the abstract
24 section, this is a little difficult to read, but the
25 objectives state, "This study examines among youth

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1 the extent of their perceived exposure to cigarette
2 marketing and the relationship of their perceptions
3 to their smoking behavior."

4 And then turning to the first column on the
5 introduction, the second paragraph, midway through
6 that paragraph the author states, "Moreover, there
7 was a growing recognition that such advertising and
8 promotion influenced teen smoking. Longitudinal
9 studies of advertising patterns and young people's
10 tobacco use demonstrate a positive association
11 between advertising and teen-age smoking."

12 And then if you would turn to the discussion
13 section on page 1220, starting in the last sentence
14 of that first paragraph, "These data paint a
15 compelling picture of youth environments that are
16 saturated with pro-smoking cues and messages.

17 "These high levels of exposure to tobacco
18 marketing are troubling because of their relationship
19 to students' smoking behavior. Our results indicate
20 that perceived exposure to tobacco advertising and
21 promotion is associated with self-reported tobacco
22 use even when we controlled for the powerful
23 influences of friends and family."

24 And finally, could you turn to the last page,
25 1221. In the left-hand column, the first paragraph

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1 starts, "Our results contribute to previous research
2 discussed above demonstrating that young people are
3 exposed to and influenced by ubiquitous cigarette
4 advertisements and promotions."

5 Professor Perry, what is the significance of
6 this article?

7 A. This study, I show -- showed you before how much
8 exposure that -- that the seventh graders had to
9 particular advertising and promotional activities.
10 The study went on further to show that those were
11 associated with significantly increased risk of
12 smoking, that it in fact doubled their risk of
13 smoking in this age group, and that was even after,
14 when they used statistics, they controlled for the
15 influence of peers and family. So they showed a
16 significant relationship between cigarette
17 advertising and promotional activities, and in
18 particular, promotional activities and seventh
19 graders' smoking behavior.

20 Q. Would you turn to Exhibit 26061. This is an
21 article which was published in the Journal of
22 Marketing in April 1996 by Richard Pollay and various
23 other authors, including Gary Giovino and Michael
24 Eriksen, it's titled "The Last Straw? Cigarette
25 Advertising and Realized Market Shares Among Youths

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1 and Adults, 1979 to 1993."

2 Is this an article that is published in a

3 reliable journal by a reliable author?
4 A. Yes, it is.
5 Q. Does it form part of the basis of your opinion?
6 A. Yes, it does.

7 MS. WALBURN: Your Honor, we would offer
8 Exhibit 26061 under 803(18).

9 MR. WEBER: No objection.

10 THE COURT: Court will receive 26061.

11 BY MS. WALBURN:

12 Q. Professor Perry, can you describe this article.

13 A. Yes. What these researchers did was look at the
14 relationship between the amount of money spent on
15 advertising for particular brands and then the
16 percent of adults and youth who smoked those
17 cigarettes, and they looked at this over time from
18 1979 to 1993, various time points for -- for
19 different brands. And what they did was create a
20 model, and they were trying to find out how sensitive
21 people are to -- to cigarette advertising, and they
22 tried this model putting youth and adults together
23 and they tried the model using youth and adults
24 separately, and what they found was that the model
25 worked better, that's statistically, but it worked

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1 better when the model was separate; that is, there
2 was a model for youth and the relationship between
3 advertising and the amount of smoking, and a separate
4 model between -- that looked at the relationship
5 between advertising and percent smoking for adults.
6 Furthermore, they found out that youth were three
7 times more sensitive to advertising than were adults.

8 Q. Would you turn to page 12 of this article.
9 Under the section titled "The Last Straw?--An
10 Implication for Marketing Scholars," the article
11 states, "Historical analysis shows the industry's
12 strategic interest in adolescents to be
13 long-standing. Analysis of contemporary corporate
14 documents shows a continuing interest in capturing
15 the young, among whom virtually all starting occurs.
16 Content analysis of advertising shows that cigarette
17 advertising imagery largely consists of pictures of
18 health and images of independence, which are known by
19 the industry to resonate with adolescent needs for
20 autonomy and freedom from authority. Behavioral
21 analyses show that cigarette advertising constitutes
22 a psychosocial risk factor. Our market share
23 analysis adds to the existing literature by showing
24 that teen-age smoking behavior is not only related to
25 previous and present advertising, but also that this

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1 relationship is about three times stronger among
2 teen-agers than among adults."

3 And then you could -- could you turn to the last
4 page, "Conclusions" of this article, and the last
5 paragraph of the conclusions, "Because of the many
6 behavioral, strategic, historical, theoretical, and
7 empirical lines of argument and research to which our

8 results add, the preponderance of logic and evidence
9 indicates that cigarette advertising is an important
10 influence on the smoking behavior of the young.
11 Scholars should treat the assertion that cigarette
12 advertising has little or no effect on adolescents as
13 naive or disingenuous."

14 Professor, can you tell us the significance of
15 these conclusions.

16 A. Well, what they were showing was just how
17 important the relationship is between advertising and
18 teen-age smoking, and that that -- the power of
19 advertising is even -- it's even more potent with
20 young people than it is with adults.

21 Q. Could you turn to Exhibit 26062. This is an
22 article which ran in the Journal of the American
23 Medical Association on February 23rd, 1994 by John
24 Pierce and other authors titled "Smoking Initiation
25 by Adolescent Girls, 1994 Through 1998, an

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1 Association With Targeted Advertising."

2 Is this an article that appeared in a reliable
3 journal by a reliable author?

4 A. Yes, it was. It was 1944 to 1988.

5 Q. I'm sorry.

6 A. But yes, it's a reliable author and a reliable
7 journal.

8 Q. And does this form part of the basis of your
9 opinions?

10 A. Yes, it does.

11 MS. WALBURN: Your Honor, we would offer
12 Exhibit 26062 under 803(18).

13 MR. WEBER: No objection.

14 THE COURT: Court will receive 26062.

15 BY MS. WALBURN:

16 Q. Professor Perry, can you describe this article.

17 A. Yes. These researchers looked at the National
18 Health Interview Surveys, the same surveys I used to
19 look at 17-year-olds, and what they did was look
20 between the years 1944 and 1988 to see if there were
21 a relationship between particular advertising
22 campaigns and increases in smoking among adolescent
23 girls.

24 Q. Would you turn to page 611 of this article, and
25 in the middle column, in the middle of the paragraph,

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1 it states, "In this study, we have demonstrated that
2 tobacco advertising has a temporal and specific
3 relationship to smoking uptake in girls younger than
4 the legal age to purchase cigarettes. Our findings
5 add to the evidence that tobacco advertising plays an
6 important role in encouraging young people to begin
7 this lifelong addiction before they are old enough to
8 fully appreciate its long-term health risks."

9 Could you explain the significance of this
10 conclusion.

11 A. Yes. What they found when they looked at the
12 research was that in the years about 1968 to the

13 early '70s, there was a large increase in adolescent
14 female smoking that I showed you on the chart, and
15 what they found was that the increase in smoking
16 among adoles -- adolescent females was only an
17 increase among adolescent females, there was only an
18 increase with those under age 18, and in fact there
19 was no increase in adolescent females who were
20 over -- 18 and over at that time. And right at that
21 time was the introduction of a number of female
22 cigarette brands such as Virginia Slims. So that the
23 response to these female brands was specifically in
24 the under-age-18 females; there wasn't a response in
25 males, and there wasn't a response to that

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1 advertising in the over-18 females.

2 Q. And is this another article which was published
3 after the 1994 Surgeon General's report?

4 A. I think it was actually published one day before
5 we actually released it, but we couldn't use this
6 article at that time. It's about exactly the same
7 time. So yes.

8 Q. Would you turn to Exhibit 26059. This is an
9 article published on February 18th, 1998, in the
10 Journal of the American Medical Association by John
11 T. Pierce and other authors titled "Tobacco Industry
12 Promotion of Cigarettes and Adolescent Smoking."

13 Is this an article that is published by a
14 reliable author in a reliable journal?

15 A. Yes, it is.

16 Q. Does it form part of the basis of your opinions?

17 A. Yes, it does.

18 MS. WALBURN: Your Honor, we would offer
19 Exhibit 26059 under Rule 803(18).

20 MR. WEBER: No objection, Your Honor.

21 THE COURT: Court will receive 26059.

22 BY MS. WALBURN:

23 Q. And Professor Perry, is this another article
24 published after the 1994 Surgeon General's report?

25 A. Yes. This article was published about three

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1 weeks ago.

2 Q. And can you generally describe this study.

3 A. Yes. These researchers looked at 12- to
4 17-year-olds in 1993, and from those 12- to
5 17-year-olds they only really examined those who were
6 not -- never smokers and not susceptible to smoking,
7 so that means they had -- that in 1993 they've never
8 had a cigarette and they didn't intend to have a
9 cigarette, and even if their best friend offered them
10 a cigarette, they wouldn't take it. So these were
11 never smoking, non-susceptible adolescents. And then
12 they looked at who progressed to smoking three --
13 three years later when they resurveyed the same
14 adolescents in 1996. And what they found was that
15 those students -- those young people who had a
16 favorite advertisement, that that would double their
17 risk of starting to smoke. Those who had said they

18 would use the promotional activity -- they didn't
19 have to own one, just who said they would use the
20 promotional activity, that tripled their -- the risk
21 of progressing to smoking. And that these amounts,
22 doubling that risk and tripling that risk, was
23 stronger than peer or family influences on starting
24 to smoke, just being able to have a favorite
25 advertisement and saying that you would use the

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1 promotional activity was stronger than peer or
2 parents' influence on smoking.

3 Q. Would you turn to page 514 of this article.

4 A. Excuse me, what page?

5 Q. 514. In the left-hand column under section
6 "Percentage of Experimentation Attributable to
7 Tobacco Promotional Activities," the article states,
8 midway through that first paragraph, "Thus, using the
9 standard formula, the percentage of experimentation
10 attributable to tobacco advertising and promotional
11 activities is 34.3 percent."

12 And then moving down to the comment section,
13 "This longitudinal study provides clear evidence that
14 tobacco industry advertising and promotional
15 activities can influence nonsusceptible never smokers
16 to start the process of becoming addicted to
17 cigarettes."

18 What is the significance of this finding,
19 professor?

20 A. Well they also did a standard kind of
21 epidemiologic kind of statistical analysis and they
22 found that over a third of the reason that these
23 adolescents began experimenting with smoking, over a
24 third of the reason could be attributed to cigarette
25 advertising and promotional activities.

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1 Q. Professor Perry, have you read the testimony of
2 Dr. Hurt in this case?

3 A. Yes, I have.

4 Q. And are you relying on his opinions on
5 addiction?

6 A. Yes, I am.

7 Q. From your review of the published literature, is
8 there any trend in the recent published literature on
9 youth and smoking in the United States?

10 A. Yes. The recent literature shows a con --
11 consistently stronger and more significant
12 relationship between cigarette advertising and
13 promotion and subsequent smoking among youth. As we
14 just saw in the literature, adolescents smoke the
15 most-advertised brands; adults don't. Adolescents
16 have high exposure to cigarette advertisements.
17 Advertising can increase under-age female smoking
18 when it's not increasing over-18 smoking. That
19 adolescents are three times more sensitive to
20 advertising than are adults. And even among never
21 smoking/non-susceptible adolescents, saying you have
22 a favorite -- favorite advertising or are willing to

23 use a promotional item greatly increases, triples
24 your risk of progress to smoking.
25 These are just a sample of the research that's
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1 been published in the last five years.
2 Q. Professor Perry, you've already discussed a
3 number of internal tobacco company documents relating
4 to youth smoking, and again were these documents
5 available to the Surgeon General for the 1994 Surgeon
6 General's report?
7 A. No, they weren't.
8 Q. Were there additional documents that you
9 reviewed relating to youth smoking?
10 A. Yes. I reviewed hundreds of documents and
11 thousands of advertisements for this case.
12 Q. And were these documents consistent or
13 inconsistent in terms of the discussions of youth
14 smoking?
15 A. The documents were overwhelmingly consistent.
16 They were consistent across time, they were
17 consistent across companies, they were consistent
18 within companies. They were overwhelmingly
19 consistent.
20 Q. Can we talk about some of the additional tobacco
21 company documents which you reviewed, starting with
22 Philip Morris.
23 What is the number-one tobacco company in terms
24 of sales and market share in the United States?
25 A. Philip Morris.

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1 Q. And what is Philip Morris's best-selling brand?
2 A. Marlboro.
3 Q. What cigarette brand has the largest share of
4 under-age smokers in the United States?
5 A. Marlboro.
6 Q. Was Marlboro always the number-one brand?
7 A. No, it wasn't.
8 Q. And was Philip Morris always the number-one
9 company in the United States?
10 A. No. No, it wasn't.
11 Q. When did Philip Morris and Marlboro begin their
12 rise in sales to the number-one position?
13 A. In the 1960s.
14 Q. Do the internal documents of Philip Morris
15 indicate whether or not Philip Morris was aware of
16 its success among teen-agers as Marlboro began to
17 rise in shares?
18 A. Yes, Philip Morris was aware of -- of their
19 success among teen-agers.
20 Q. Would you turn in book one to Exhibit 11808.
21 This is a Philip Morris document that has previously
22 been admitted into evidence dated March 29th, 1979,
23 it's on the corporate headquarters letterhead of
24 Philip Morris U.S.A. and it's titled "MARLBORO." The
25 first paragraph states, "Marlboro represents 60

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1 percent of Philip Morris U.S.A. sales. The brand
2 accounts for one-third of all growth of Philip Morris
3 U.S.A. In 1978 101 billion units were sold. The
4 brand represents 17 percent of the national share of
5 cigarettes. Paren, (One in five smokers smoke
6 Marlboro)."

7 And then if you move to the last sentence of
8 that paragraph, "It was the first brand to pass 100
9 billion units sold."

10 And then moving down to the demographics
11 paragraph, "Marlboro dominates in the 17 and younger
12 age category, capturing over 50 percent of this
13 market."

14 Professor Perry, what is the significance of
15 this document?

16 A. Well Philip Morris is people -- or people are
17 smoking -- about one out of five are smoking Marlboro
18 by 1979, and they're saying that a large share --
19 they've captured 50 percent of the under-17 market.

20 Q. Is there any indication in this internal Philip
21 Morris document about a concern that Marlboro had
22 over 50 percent of the 17-and-under cigarette market?

23 A. No, there was no concern, but "capturing" seems
24 like it's something that one would want to do,
25 capture over 50 percent of the market.

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1 Q. Would you turn to Exhibit 11780, and that's in
2 the third book. This is a document that's previously
3 been admitted titled "PRODUCT TESTING SHORT COURSE,"
4 produced by Philip Morris. And if you turn to the
5 next page, it was written by the Product Evaluation
6 Division, R&D Department, Philip Morris U.S.A. in
7 1984.

8 Would you turn to page 504 of this document.
9 And do you see in the first paragraph that it's
10 talking about a post-war increase in smoking?

11 A. Yes. It says, "Pall Mall was the first brand to
12 capitalize on the post-war increase in female
13 smoking."

14 Q. And from your review of this document, which war
15 were they discussing?

16 A. This is World War II.

17 Q. Moving to the next paragraph, the document
18 states, "Marlboro floundered for eight years and then
19 hit a responsive chord among post-war baby-boom
20 teenagers with the theme from the Magnificent Seven
21 and an image uncalculatedly right for the wave of
22 teenagers coming of smoking age."

23 Professor, what was that image that's being
24 discussed in this document?

25 A. The Marlboro Man.

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1 Q. And when was the Marlboro campaign started on a
2 national basis?

3 A. It was started in 1962.

4 Q. And have you reviewed television ads for
5 Marlboro from the 1960s?
6 A. Yes, I have.
7 MS. WALBURN: Your Honor, at this point we
8 would offer Exhibit 20896, which is a video of two
9 Marlboro television commercials which ran in 1965.
10 MR. WEBER: No objection, Your Honor.
11 THE COURT: Court will receive 20896.
12 (Videotape played.)
13 BY MS. WALBURN:
14 Q. Professor Perry, do these ads relate to the
15 developmental themes that you discussed earlier this
16 morning?
17 A. Yes, definitely. The Marlboro Man is clearly
18 independent, out there doing his thing. This is a
19 young, attractive man who's established his identity
20 as a cowboy. An adolescent watch -- watching an ad
21 like that would associate smoking with being
22 independent and on your own. And, you know, there --
23 there are no parents in Marlboro Country.
24 Q. Would you turn in book one to Exhibit 10316.
25 This is a document which has previously been admitted

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1 into evidence. It's dated May 23rd, 1969, produced
2 by Philip Morris, from M. E. Johnston to Dr. R. B.
3 Seligman, and it's titled "Marlboro Market
4 Penetration by Age and Sex."

5 Do you see on the first page that is discussing
6 early computer printouts of cigarette preferences by
7 broad age groups?

8 A. Yes, I do.

9 Q. And in that first paragraph it references POL
10 National Roster.

11 A. Right.

12 Q. Are you aware of whether POL performed work for
13 Philip Morris?

14 A. Yes. It's the Product Opinion Laboratory.

15 Q. Would you turn to the second page of this
16 document. And there's a chart that's difficult to
17 read, but in the upper right-hand corner it says
18 "Percent of smokers who smoke Marlboro by sex and
19 single years of age." Can you describe this chart.

20 A. Yes.

21 Could we have the whole chart back? Thank you.

22 What has been charted out here is the percent of
23 male and female smokers who smoke Marlboro by their
24 age. So there's an age -- the percentages are up
25 here, they go 5, 10, 15, 20, 25, 30, and then the age

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1 15, 20, 25, 30, so -- and what you can see is that
2 the highest concentration, the greatest percent of
3 smokers are 15 to 17 years old, and it's declining.
4 And this is in 1969.

5 Q. What is the significance of that date 1969 with
6 respect to the sale of Marlboro cigarettes?

7 A. Well this was early in the Marlboro Man
8 campaign, and they already knew early in the campaign

9 that they were appealing to under-age smokers. Those
10 are the ones they were most appealing to.

11 Q. And by "they," you mean --

12 A. Philip Morris.

13 Q. Would you turn to Exhibit 10497.

14 MR. WEBER: Your Honor, before we move on,
15 just -- I didn't want to interrupt because I don't
16 think there was an objection to that document, but
17 our records don't indicate that last one in under
18 that number. Might that have been one that went in
19 under another number, just for the record?

20 MR. CIRESI: It was in under 2555, Your
21 Honor. It went in on a deposition, 2555.

22 MR. WEBER: Okay. So we do not object to
23 that, but I was confused as to the number, Your
24 Honor.

25 THE COURT: All right.

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1 Q. Would you turn to Exhibit 10497. This is a
2 document that was previously admitted, "A Study Of
3 Smoking Habits Among Young Smokers, Prepared for
4 Philip Morris Incorporated, July 1974" by the Roper
5 Organization Inc. Can you briefly describe this
6 document.

7 A. Yes. These are the results of a survey that was
8 done with over a thousand young smokers by the Roper
9 Organization for Philip Morris.

10 Q. Would you turn to page two of the document. In
11 that first paragraph, starting midway through the
12 paragraph, the document states, "An upper age limit
13 of 24 was assigned but no lower age limit, and an
14 instruction to get some college students in each age
15 group was given. Interviewers were instructed to go
16 to locations where young people as described in their
17 quota assignments were likely to be found -- near
18 high schools and colleges, around young people's
19 hang-outs, such as soda fountains, recreation areas,
20 parks, bowling alleys, beaches, lakes, et cetera."

21 What is the significance of that statement?

22 A. Well this research study, the study for Philip
23 Morris, the instructions were to get people -- to be
24 able to interview people under 22 years of age. In
25 fact, the survey instrument is in this document and

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1 has a check-off for 14 years of age or younger, so
2 they were clearly explicitly going to interview young
3 people. Plus they, the interviewers, were instructed
4 to go near high schools or soda fountains, et cetera,
5 where under-age people would be found.

6 Q. Would you turn to the last page of the document,
7 Bates number 6185. Is this the survey instrument
8 that you referenced?

9 A. Yes, it is. This -- they asked "How old do you
10 happen to be?" and you can see that they just circled
11 the answer, whether it's 14 or younger, 15-16, so
12 forth.

13 Q. Would you turn to page four of the document.

14 And at the bottom of that page the document states,
15 "Marlboro is the starting brand for young whites, and
16 Kool is the starting brand for young blacks."

17 What's the significance of that statement?

18 A. Well what they found was that Marlboro was the
19 starting brand; that is, that is the brand that the
20 starters, primarily under-age teens, that's the first
21 brand that they would start with.

22 Q. Would you turn to page six of the document. And
23 looking in the second paragraph from the bottom,
24 starting with the last sentence, the document states,
25 "Thus, if Kool -- or some other brand -- catches fire

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1 among young whites, the bandwagon effect could be
2 devastating, and fast.

3 "What can Philip Morris do about the situation?

4 We are not sure that anything can be done to halt a
5 major exodus if one gets going among the young. This
6 group follows the crowd, and we don't pretend to know
7 what gets them going for one thing or another.

8 Certainly Philip Morris should continue efforts for
9 Marlboro in the youth market, but perhaps as strongly
10 as possible aimed at the white market rather than
11 attempting to encompass blacks as well."

12 What's the significance of these statements?

13 A. Well at this point in time Philip Morris was
14 worried about Kool cigarettes and whether -- and
15 their competition with Marlboro among -- among young
16 people. They -- they were -- also recognized the
17 fact that once a brand get -- gets introduced or
18 people start smoking, then peer group can -- can
19 influence that.

20 The last sentence, though, is very important,
21 "...Philip Morris should continue efforts for
22 Marlboro in the youth market...." Their advertising
23 agency is telling Philip Morris that they should
24 continue their advertising and promotional activities
25 around Marlboro, aimed at the youth market.

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1 Q. Would you turn to Exhibit 10339. This is a
2 document which was previously admitted into evidence,
3 the title page is the second page of the document,
4 titled "PHILIP MORRIS U.S.A. RESEARCH CENTER," the
5 date is March 31st, 1981, and the report title is
6 "Young Smokers, Prevalence, Trends, Implications, and
7 Related Demographic Trends." It was written by Myron
8 E. Johnston and approved by Harry Daniel and Carolyn
9 Levy. And among the distribution list in the
10 right-hand column is Mr. J. Zoler, New York office,
11 who was director of marketing research.

12 Could you turn to page 805 of this document.
13 And the document states, "For over fifteen years
14 certain demographic and social trends have been
15 moving in directions favorable to industry growth.
16 Now, one by one, these powerful social and
17 demographic factors are turning against us, and by
18 1985 all will be operating against us."

19 The trends are, number one, "After increasing
20 for over a decade, the prevalence of teen-age smoking
21 is now declining sharply."
22 And number two, "After increasing for over a
23 decade, the average daily consumption of teen-aged
24 smokers is declining."
25 Professor Perry, you've reviewed this document
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1 in its entirety?
2 A. Yes, I have.
3 Q. And does this Philip Morris document view the
4 declining teen-age smoking to be a positive or
5 negative development?
6 A. They -- they -- they view the -- the decline as
7 a negative development. They considered it a factor
8 turning against them.
9 Q. And you're referring to the words in the first
10 paragraph there?
11 A. Yes, I am.
12 Q. Would you turn to page 808 of this document.
13 Under "Summary," the document states, "It is
14 important to know as much as possible about teen-age
15 smoking patterns and attitudes. Today's teen-ager is
16 tomorrow's potential regular customer, and the
17 overwhelming majority of smokers first begin to smoke
18 while still in their teens. In addition, the ten
19 years following the teen-age years is the period
20 during which average daily consumption per smoker
21 increases to the average adult level. The smoking
22 patterns of teen-agers are particularly important to
23 Philip Morris: Of the eleven packings of which the
24 median age of smokers is under age 30, seven are
25 Philip Morris packings, and the share index is
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1 highest in the youngest age group for all Marlboro
2 and Virginia Slims packings and for B&H Lights and
3 Menthol.
4 "Furthermore, it is during the teen-age years
5 that the initial brand choice is made: At least a
6 part of the success of Marlboro Red during its most
7 rapid growth period was because it became the brand
8 of choice among teen-agers who then stuck with it as
9 they grew older - this combined with the rapid growth
10 in the absolute number of teen-agers."
11 Professor Perry, what's the significance of
12 these statements?
13 A. Well, what they're saying is that a large part
14 of the success of Marlboro was because of teen-agers.
15 Teen-agers chose Marlboro as their brand of choice
16 and then, as they said, stuck with it as they grew
17 older. Also, at the top they're talking about that
18 it's important to know as much as possible about
19 teen-age smoking patterns and attitudes. And why?
20 Because the teen-ager is tomorrow's potential regular
21 customer, and the overwhelming majority first begin
22 to smoke while in their teens and they make their
23 first brand choices. So they realize the importance

24 of teens in the success of Marlboro. They realize
25 the importance of teens as -- in the future of their
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1 business.
2 Q. Can we turn to another tobacco company, R. J.
3 Reynolds. Where does R. J. Reynolds currently rank
4 among U.S. cigarette companies in terms of sales?
5 A. Number two.
6 Q. And did RJR launch a new marketing campaign in
7 the 1980s in an effort to try and catch up with
8 Philip Morris?
9 A. Yes, they did. The Joe Camel campaign.
10 Q. Can you turn to Exhibit 12495. This is an R. J.
11 Reynolds document titled "Marketing Research Report,"
12 and it's dated November 29th, 1971. "NFO PROFILES
13 FOR CAMEL REGULAR AND FILTER."
14 Is this a document which you have reviewed in
15 this litigation?
16 A. Yes, it is.
17 Q. Does it form part of the basis of your opinions?
18 A. Yes, it does.
19 MS. WALBURN: Your Honor, we would offer
20 Exhibit 12495.
21 MR. WEBER: No objection, Your Honor.
22 THE COURT: Court will receive 12495.
23 BY MS. WALBURN:
24 Q. This is the title page of the document. There's
25 a copy list with a number of R. J. Reynolds personnel
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1 listed, and at the bottom of the page states
2 "PUBLISHED BY THE MARKETING RESEARCH DEPARTMENT, R.
3 J. REYNOLDS TOBACCO COMPANY, WINSTON-SALEM, NORTH
4 CAROLINA."
5 Could you turn to page 6068. And on this page
6 they're discussing NFO profiles for Camel regular and
7 filter, and the second paragraph addresses Camel
8 Filter, and this states, "Camel Filter continues to
9 show growth in both share of total cigarette smokers
10 and share of 85-millimeter normal flavor filter
11 smokers. The brand's consumer profile is similar to
12 its parent brand; i.e., male, downscale and
13 income/occupational/educational. However, the
14 brand's profile is also showing some favorable
15 change. Specifically, relative to total smokers, the
16 brand's profile is becoming more young and slightly
17 more urban."
18 Then if you move down to the last sentence of
19 that paragraph, "A primary competitor for Camel
20 Filter is Marlboro. Of importance, it should be
21 noted that Marlboro is rapidly growing in share of
22 smokers, especially among those in younger age
23 groups.
24 "Perhaps the most interesting data in this
25 report is that for smokers 14 to 20 years of age.
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1 Basically, it emphasizes two factors for the Camel
 2 brands. First, Camel Regular appears to have very
 3 little future among young smokers. Second, Camel
 4 Filter demonstrates some potential for growth. Also,
 5 it must be observed that Marlboro is extremely strong
 6 among persons 14 to 20 years old."

7 Professor Perry, what's the significance of
 8 those statements?

9 A. Well this was an early document, 1971, where R.
 10 J. Reynolds is noticing how well Marlboro is doing in
 11 the 14- to 20-year-old, but also that Camel Filter is
 12 beginning to show some -- some positive trend among
 13 young as well. And so you're beginning to get a
 14 sense that -- that Marlboro and Camel are -- are
 15 competition; in fact, it says the primary competitor
 16 for Camel Filter is Marlboro.

17 Q. And does this document reflect that the Camel
 18 Filter attracting younger smokers was a positive --
 19 positive or negative development to the authors at
 20 RJR?

21 A. It was a positive development. Says
 22 specifically -- it says the brands -- excuse me,
 23 "However, the brand's profile is also showing some
 24 favorable change, specifically becoming more young."
 25 So that was considered a favorable change.

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1 Q. Can you turn to the last page of this document,
 2 page 6095. This is a chart titled "NFO PROFILE,
 3 YOUNGER SMOKERS - AGES 14 to 20, April 1971."

4 Can you tell us what age groups RJR was tracking
 5 in this chart?

6 A. In this chart they are tracking 14- or
 7 15-year-olds, the share of smokers, then 16- to
 8 17-year-olds in a separate column, and then 18- to
 9 20-year-olds in the third column.

10 Q. And this document is reporting NFO data?

11 A. Right.

12 Q. And is this government data or RJR proprietary
 13 data?

14 A. This is data from the National Family Opinion,
 15 Incorporated that was produced for R. J. Reynolds,
 16 not government data.

17 Q. Would you turn to Exhibit 12360. This is an RJR
 18 document dated September 21, 1972 to Mr. W. S. Smith,
 19 Jr., titled "COMPANY SHARES BROKEN BY AGE GROUPS."

20 Is this a document which you have reviewed in
 21 this case?

22 A. Yes, it is.

23 Q. Does it form part of the basis of your opinions?

24 A. Yes, it does.

25 MS. WALBURN: Your Honor, we would offer
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1 Exhibit 12360.

2 MR. WEBER: No objection, Your Honor.

3 THE COURT: Court will receive 12360.

4 BY MS. WALBURN:

5 Q. Looking at the chart that is depicted on page
6 one, "COMPANY SHARE OF SMOKERS BY AGE," what age
7 groups are being reported on in this chart?
8 A. They're reporting 14- to 17-year-olds together,
9 then 18 to 24, 25 to 34, and 35-49, and then 50 and
10 over.
11 Q. And at this time in 1972, what was the share of
12 14- to 17-year-old smokers for RJR?
13 A. Twenty-four percent of 14- to 17-year-olds
14 smoked RJR cigarettes.
15 Q. And in the same time period, what was the share
16 of 14- to 17-year-old smokers for Philip Morris?
17 A. Forty-six percent. So almost double.
18 Q. Moving to the left, the column that's titled
19 "Total Smokers," what does that line represent?
20 A. That represents the percent who smoke each --
21 cigarettes in each of these companies in terms of
22 total, the total smokers, not -- not just one age
23 group.
24 Q. And what would be the percent of total smokers
25 smoking RJR?

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1 A. Thirty percent.
2 Q. And Philip Morris?
3 A. Nineteen percent.
4 Q. What significance, if any, is there between the
5 comparison of total smokers of all ages for RJR and
6 Philip Morris compared to smokers for those two
7 companies in the 14- to 17-year-old age group at this
8 period of time in 1972?
9 A. Well in 1972 you can see that RJR had more share
10 of total smokers than Philip Morris did, they had 30
11 percent compared to Philip Morris, now that's among
12 all smokers, but basically the 14- to 17-year-olds,
13 that they were overwhelmingly starting to smoke
14 Philip Morris brands. So that although RJR was
15 number one in 1972, they could begin to see that
16 Philip Morris was catching up by attracting younger
17 smokers.
18 Q. And is that eventually what happened in the
19 marketplace?
20 A. Yes, it did.
21 Q. Would you turn to Exhibit 12493. This is a
22 document which has been previously introduced and
23 which you discussed previously this morning,
24 "Presentation to RJRI Board of Directors -- 9/30/74,
25 Marketing Plan," and turning to the first page of

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7053

1 that document, this is titled "1975 MARKETING PLANS
2 PRESENTATION, HILTON HEALTH, SEPTEMBER 30, 1974."
3 "Our paramount marketing objective in 1975 and
4 ensuing years is to reestablish RJR's share of
5 marketing growth in the domestic cigarette industry.
6 "We will speak to four key opportunity areas to
7 accomplish this.
8 "They are:
9 1- Increase our young adult franchise."

10 Then if you move down to the next paragraph,
11 "First...", "First, let's look at the growing
12 importance of the young adult in the cigarette
13 market. In 1960, this young adult market, the
14 14-to-24 age group, represented 21 percent of the
15 population.

16 "As seen by this chart, they will represent 27
17 percent of the population in 1975. They represent
18 tomorrow's cigarette business. As this 14-to-24 age
19 group matures, they will account for a key share of
20 the total cigarette volume -- for at least the next
21 25 years."

22 Would you turn to the next page.

23 "Both Philip Morris and Brown & Williamson, and
24 particularly their fast growing major brands,
25 Marlboro and Kool, have shown unusual strength among

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1 these younger smokers. In the 14-to-24 age category,
2 Philip Morris has a 38 percent share and B&W a 21
3 percent share. Both companies have significantly
4 lower shares in the remaining age categories.

5 "With strong young adult franchises and high
6 cigarette brand loyalties, this suggests continued
7 growth for Philip Morris and B&W as their smokers
8 mature.

9 "In sharp contrast, our company line shows a
10 pattern of relatively even strength among all age
11 groups and strength in the 25 and older categories,
12 where we exceed both competitors."

13 Then moving down to the last paragraph on this
14 page, "This suggests slow market share erosion for us
15 in the years to come unless the situation is
16 corrected."

17 And moving to the next page, "Thus, our strategy
18 becomes clear for our established brands:

19 "1- Direct advertising appeal to the younger
20 smokers."

21 Professor Perry, what is the significance of
22 those statements to the board of directors of R. J.
23 Reynolds?

24 A. What is presented was that Philip Morris and
25 Brown & Williamson were increasing in share due to

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1 their popularity among younger smokers, which they
2 defined explicitly as 14- to 24-year-olds for young
3 adults. In contrast, R. J. Reynolds was losing share
4 because they weren't doing as well with this younger
5 group. They -- they said this suggests slow market
6 share erosion. They could see their total market
7 share going down because they weren't attracting the
8 14-to-24 age group. So they had as their number one
9 key opportunity area to increase their young adult
10 franchise, and the number one strategy was direct
11 advertising appeal to these younger smokers.

12 Q. Moving down this page where it states by chart
13 eight "For Winston..." "For Winston, we followed this
14 strategy in developing the new 'candid' advertising

15 campaign which broke September 16. It is especially
16 designed to appeal to young adults."
17 What is the significance of that statement?
18 A. Well they're developing a new candid advertising
19 campaign to appeal to young adults, and they defined
20 young adults as 14 to 24, so they're planning an
21 advertising campaign for the 14- to 24-year-olds.
22 Q. And moving to the last paragraph on this page,
23 "For Salem, significant improvements have been made
24 in the advertising, designed for more young adult
25 appeal under its greenery/refreshment theme."

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1 What is the significance of that statement?
2 A. Well for Salem, they've also made improvements
3 or changes in their advertising to appeal to the
4 young adults which they -- is explicitly defined as
5 14- to 24-year-olds.
6 Q. Moving to the next page, the second paragraph
7 states, "Research has shown these changes have
8 measurably improved the ads in terms of:
9 "Greater recall
10 "Greater refreshment playback
11 "More young adult appeal - trial has increased
12 from 24 percent to 31 percent in the under 35 age
13 group for the King Size."
14 What's the significance of that statement?
15 A. This is referring still to Salem, and they've
16 done research to see how well Salem is doing, and
17 this new Salem campaign, which is aimed at the 14- to
18 24-year-olds, is already working.
19 Q. Would you turn to page Bates number 1316.
20 Midway through this page, page 1316 -- thank you --
21 midway through this page the document states, "Ad
22 spending has been increased in 1975 with more
23 targeted efforts against young adults to more fully
24 exploit this potential.
25 "We have also increased our media efforts toward

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1 young adults for our brands.
2 "These include:"
3 And then in the paragraphs that follow, do you
4 see reference to certain magazines, including Sports
5 Illustrated?
6 A. Yes, I do.
7 Q. Playboy?
8 A. Yes.
9 Q. Ms.?
10 A. Yes.
11 Q. Road & Track and Motorcycling?
12 A. Yes.
13 Q. Would you turn to the next page, page 1317. The
14 document states, "Each of our major special events is
15 directed against young adults."
16 And then do you see in the remainder of that
17 page it references NASCAR?
18 A. Yes.
19 Q. Rodeos?

20 A. Right.
21 Q. And in the last paragraph, sports car racing and
22 motorcycling?
23 A. Yes.
24 Q. Would you turn to page Bates number 1319. And
25 looking at the last paragraph on that page, the
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1 document states, "Other programs have been developed
2 to reach young adults where they work, play and where
3 they purchase their cigarettes. Free-on-package
4 trial inducement promotions are being used in high
5 traffic, young adult package outlets such as
6 convenience stores. Seven million trial units will
7 be sold in 1975. We will have permanent counter
8 displays in 35,000 outlets catering to young adult
9 package purchases."

10 Then move to the next page. Does that first
11 paragraph discuss couponing?

12 A. Yes, it does.

13 Q. And what would that be?

14 A. That is get a coupon for -- for another pack of
15 cigarettes with a purchase.

16 Q. And the next paragraph states, "Our special
17 merchandising division is in its second year with its
18 successful wholesale operation of premiums at beaches
19 and special events through a separate sales force and
20 a mobile store. We anticipate selling over a million
21 items in 1975 -- a million 'walking billboards' for
22 our brands.

23 "We will continue our special sampling programs
24 on beaches, resort areas and sports arenas in major
25 metro markets -- where there are large congregations

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1 of young adults."

2 Professor Perry, what is the significance of
3 these marketing and promotion activities being
4 discussed in this document?

5 A. Well this entire document is a -- was presented
6 to the board of directors, talks about this new or
7 revived young adult campaign aimed at 14- to
8 24-year-olds, it's a large-scale, multi-component
9 campaign using new advertising or revitalized
10 advertising, and there's a whole range of promotional
11 activities.

12 Q. Would you turn to Exhibit 12865, also in book
13 one. This document was previously admitted into
14 evidence, it's an RJR document dated January 23rd,
15 1975 from J. F. Hind to Mr. C. A. Tucker,
16 vice-president, head of marketing and sales.

17 And the document states, "Our attached
18 recommendation to expand nationally the successfully
19 tested 'Meet the Turk' ad campaign and our new
20 Marlboro-type blend is another step to meet our
21 marketing objective: To increase our young adult
22 franchise. To ensure increased and longer-term
23 growth for Camel Filter, the brand must increase its
24 share penetration among the 14-to-24 age group which

25 have a new set of more liberal values and which
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1 represent tomorrow's cigarette business.

2 "Presently, almost two-thirds of the Camel
3 Filter business is among smokers over 35 years of
4 age, more than twice that for Marlboro. While 'Meet
5 the Turk' is designed to switch the brand's age
6 profile to the younger age group, this won't come
7 over night. Patience, persistence, and consistency
8 will be needed."

9 Professor Perry, what's the significance of this
10 document?

11 A. Well this is a campaign, successfully tested
12 "Meet the Turk" campaign for Camel Filter. Again,
13 they're very explicitly saying this is for the
14 14-to-24 age group. They also say -- RJR also says
15 that patience, persistence and consistency will be
16 needed, that means that they're willing to work long
17 and hard, they're willing to be patient and
18 persistent in order to be able to attract this age
19 group.

20 Q. Would you turn in book one to Exhibit 12714.
21 This is an RJR document dated October 30, 1975 from
22 John M. Wallace to Mr. T. L. Ogburn, Jr., titled
23 "SHARE OF SMOKERS BY AGE GROUP." Is this a document
24 which you have reviewed in this case?

25 A. Yes, it is.

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1 Q. Does it form part of the basis of your opinions?

2 A. Yes, it does.

3 MS. WALBURN: Your Honor, we would offer
4 Exhibit 12714.

5 MR. WEBER: No objection, Your Honor.

6 THE COURT: Court will receive 12714.

7 We'll take a short recess at this time.

8 THE CLERK: Court stands in recess.

9 (Recess taken.)

10 THE CLERK: All rise. Court is again in
11 session.

12 (Jury enters the courtroom.)

13 THE CLERK: Please be seated.

14 THE COURT: Counsel.

15 MS. WALBURN: Thank you, Your Honor.

16 BY MS. WALBURN:

17 Q. Professor Perry, do you have Exhibit 12714,
18 which has just been admitted, in front of you?

19 A. Yes, I do.

20 Q. Would you turn to the second page of that
21 exhibit. This is a chart title "TRENDS IN WINSTON'S
22 SHARE OF SMOKERS BY AGE GROUP COMPARED WITH MARLBORO
23 (BASED ON SPRING SCREENINGS OF THE NFO PANEL IN YEARS
24 INDICATED)."

25 Can you tell us what information is displayed in
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1 this chart.
2 A. Yes. It shows the percentage of, as you can
3 see, younger smokers ages 14 and 17, and adult
4 smokers 18 and over, the percent that smoke Winston
5 King or Winston Super or the total Winston, and it
6 shows the years, you know, 1966, 1969, 1972, '73,
7 '74, '75, and handwritten a '76.
8 Q. And would you turn to the next page, please.
9 Does this show similar information for the Salem
10 brand?
11 A. Yes, it does.
12 Q. Would you turn to page one of the document. In
13 the third paragraph the document states, "SALEM King
14 shows encouraging growth by posting a four point gain
15 in the 14 to 17 market. There were no changes in the
16 older markets."
17 What's the significance of that statement?
18 A. Well that -- what they're saying is that Salem
19 was increasing its share among the 14- to
20 17-year-olds and only among the 14- to 17-year-olds.
21 There were no changes in the older market; that is,
22 older than -- 18 and older. And they thought this
23 was encouraging growth in the 14- to 17-year-olds.
24 Q. And when you state that "they thought," who is
25 "they?"

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1 A. "They" is R. J. Reynolds Tobacco Company.
2 Q. Would you turn to Exhibit 13101. This is a July
3 22nd, 1980 R. J. Reynolds document previously
4 admitted, subject, "MDD Report on Teenage Smokers (14
5 to 17)," it's from G. H. Long, who was the head of
6 marketing and went on to become the president of RJR,
7 and it's to Mr. E. A. Horrigan, Jr., the president of
8 RJR.
9 And the document states, "Attached is a MDD
10 report covering the aforementioned subject. Last
11 January, a report was issued on this subject that
12 indicated that Philip Morris had a total share of 59
13 among 14- to 17-year-old smokers, and specifically,
14 Marlboro had a 52 share. This latest report
15 indicates that Philip Morris's corporate share has
16 increased by about 4 points; however, Marlboro
17 remains the same at 52.
18 "Importantly, the report further indicates that
19 RJR continues to gradually decline, and between the
20 spring and fall 1979 periods, RJR's total share
21 declined from 21.3 to 19.9.
22 "Hopefully, our various planned activities that
23 will be implemented this fall will aid in some way in
24 reducing or correcting these trends."

25 Professor, according to this document, what was
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1 Philip Morris's share of the 14- to 17-year-old
2 market in 1980?
3 A. Fifty-nine percent.
4 Q. And in the second paragraph there's a reference
5 for RJR and RJR's total share declining. From

6 reviewing this document and other RJR documents, can
7 you tell what age group this references?
8 A. Yes. This is also 14- to 17-year-olds. These
9 data came from the NFO surveys.
10 Q. In looking at the third paragraph, what was the
11 response from RJR to this indication that sales were
12 declining in the 14- to 17-year-old age group?
13 A. That they had a number of planned activities,
14 advertising and promotional activities that would be
15 implemented in the fall of 1980 to try to correct
16 this downward trend among 14- to 17-year-olds.
17 Q. Would you turn in this book to Exhibit 12811.
18 This document was previously admitted into evidence.
19 It's a confidential marketing research report from
20 RJR dated February 1st, 1985. The title is "CAMEL
21 YOUNGER ADULT SMOKER FOCUS GROUPS," and there were
22 copies to a number of people including Mr. L. W.
23 Hall, the head of marketing research.
24 Can you tell us briefly what this document
25 discusses.

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1 A. Yes. This is a report from focus groups, group
2 discussions that were held among younger adults
3 around six new advertising campaign ideas. So this
4 is the report from those focus groups where they
5 looked at six new advertising campaigns for younger
6 adults.
7 Q. And would you turn to page Bates number 7 --
8 5739. The second paragraph on that page says, "Of
9 the six themes, 'Go with it' and the 'French Camels'
10 appeared to attract the most positive attention.
11 General reaction to these themes was as follows:"
12 What's the significance of that statement?
13 A. That means that what the focus group
14 participants, the younger adults, said was that these
15 two themes -- they presented them with six themes,
16 and of these -- the six themes, these two were the
17 ones that they responded to most positively, "Go with
18 it" and "French Camels."
19 Q. And what is the French Camel campaign?
20 A. The French Camel campaign was a campaign that
21 was actually started and implemented in the early
22 1970s in France, and it's a cartoon character of --
23 of a Camel.
24 Q. At the time this document was written in 1985,
25 was the Joe Camel cartoon campaign being used in the

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1 United States?
2 A. No, they were still in the planning stages.
3 Q. Turning to paragraph number two of this
4 document, titled "French Camels," the document
5 states, "These ads were well received due to the
6 fun/humor aspects of the cartoons. More than any
7 other theme, the 'French Camels' appeared to attract
8 the respondents' attention. The main drawbacks of
9 these executions were that: one, they may be more
10 appealing to an even younger age group and two, there

11 is some confusion as to the meaning behind them,
12 paren, (some focus group members were hard-pressed to
13 explain the purpose of the ads)."

14 According to this report, the French Camel
15 cartoon had more appeal to younger age groups; is
16 that correct?

17 A. Yes, it is.

18 Q. Was that viewed as a positive or a negative in
19 this document?

20 A. In this document, that was viewed as -- as a
21 drawback.

22 Q. And was that the end of the discussion of the
23 French Camel campaign by Reynolds in the United
24 States?

25 A. No, with just some modifications, the French

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1 Camel went on to be the Joe Camel campaign.

2 Q. Was there a video created by R. J. Reynolds to
3 introduce plans for the 75th birthday campaign, the
4 Joe Camel campaign, to its sales force?

5 A. Yes, there was.

6 Q. And have you reviewed that video?

7 A. Yes, I have.

8 Q. Is it part of the basis of your opinion?

9 A. Yes, it is.

10 MS. WALBURN: Your Honor, we would offer
11 that video, Camel's 75 Birthday Campaign, Exhibit
12 19619.

13 MR. WEBER: Again, there were several
14 videos produced on this. I assume we're just running
15 one entirely?

16 MS. WALBURN: It is one entire one. It was
17 provided to defense counsel last week.

18 MR. WEBER: Okay. No objection.

19 THE COURT: Court will receive 19619.

20 (Videotape played.)

21 BY MS. WALBURN:

22 Q. Professor Perry, what's the significance of this
23 RJR video?

24 A. Well as you could see, they were -- RJR was
25 introducing Joe Camel in a big way, a huge

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1 multi-component program with advertising, promotions,
2 coupons, various planned strategy, with -- with
3 almost everything that would be appealing to an
4 under-age smoker.

5 Q. The video referenced people ages 18 to 34 years
6 old. What's the significance of that?

7 A. Well this was a time, a more recent time when
8 the terminology was -- wasn't to use teen-agers in --
9 in their terminology.

10 Q. And the video also referenced -- referenced the
11 French Camel campaign. What's the significance of
12 that?

13 A. Well as we just saw in the last document, the
14 French -- they knew that the --

15 RJR knew that the French Camel would appeal to

16 an even younger age group, and so they knew in
17 planning the Joe Camel campaign that it would appeal
18 to the under-18 group.

19 Q. And what happened, Professor Perry, to sales of
20 Camel among under-age smokers when the Joe Camel
21 campaign was introduced in 1988?

22 A. Well as we saw in the research document from
23 Morbidity and Mortality Weekly Review earlier in this
24 testimony, the sales of Camels among under-age
25 smokers climbed significantly.

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1 Q. Did you review internal tobacco company
2 documents which demonstrated whether Philip Morris,
3 RJR's competitor, was watching the impact of the Joe
4 Camel ad campaign in the marketplace?

5 A. Yes, I did.

6 Q. Would you turn to Exhibit 11823. This is a
7 March 1992 document produced by Philip Morris in this
8 litigation titled "THE VIABILITY OF THE MARLBORO MAN
9 AMONG THE 18 TO 24 SEGMENT."

10 Is this a document which you have reviewed in
11 this case?

12 A. Yes, it is.

13 Q. Does it form part of the basis of your opinions?

14 A. Yes, it does.

15 MS. WALBURN: Your Honor, we would offer
16 Exhibit 11823.

17 MR. WEBER: Your Honor, we'd object to
18 that. This is not a Philip Morris document submitted
19 to Philip Morris by a third party, so it constitutes
20 hearsay in its entirety.

21 MS. WALBURN: Your Honor, this is a
22 document produced in this litigation by Philip
23 Morris. It states on its title page that it was
24 prepared by an outside ad agency for Philip Morris,
25 and it is an admission of an agent within the scope

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1 of the agency under Rule 801(d)(2)(D).

2 THE COURT: Court will receive 11823.

3 BY MS. WALBURN:

4 Q. Looking at the title page of this document, it
5 states, "THE VIABILITY OF THE MARLBORO MAN AMONG THE
6 18 TO 24 SEGMENT," and moving down the page, "FOR
7 PHILIP MORRIS, BY BRUCE ECKMAN, INC., NEW YORK, NEW
8 YORK, MARCH, 1992."

9 Would you turn to page three of the document.
10 And the last paragraph of this page, in the last
11 sentence states, "However, to ignore the impudence of
12 the Camel could also be gambling with the entry level
13 smoker and the future of the Marlboro franchise."

14 What is the significance of that statement?

15 A. Well this was the result of a study, a focus
16 group study, and they're saying to ignore the Camel,
17 Joe Camel, would be gambling with the entry level,
18 the starter smokers, who are primarily under age. So
19 to ignore Joe Camel would be gambling with the future
20 of Marlboro.

21 Q. Have you seen any evidence of what if anything
22 Philip Morris did in the marketplace at around this
23 time after Camel began its rise in sales among young
24 people?
25 A. Yes, I did.

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1 Q. Would you turn in book two to Exhibit 20177.
2 This is a report previously admitted into evidence of
3 advertising R&D and youth prevention expenses as
4 totaled from information provided in discovery in
5 this litigation. And the pages aren't numbered, but
6 nine pages in there's a chart titled "ADVERTISING R&D
7 AND YOUTH PREVENTION, Philip Morris," on the top of
8 the page.

9 A. Yes.

10 Q. And looking at the line titled "Advertising,
11 Marketing & Promotion Expenditures," can you look at
12 the years 1992 and when that last document was
13 written in 1993, and tell us what happened to
14 advertising, marketing and promotion expenditures by
15 Philip Morris in this time period.

16 A. Yes.

17 MR. WEBER: Your Honor, Your Honor, may I
18 raise an issue first. I think this is the report
19 that there was a motion pending about, about -- if
20 the court will remember, about just what had been
21 admitted on this and just what hadn't, as to whether
22 it was several demonstratives or whether it was the
23 entire report, and I think the -- that question is
24 still pending. So to the extent there's something in
25 here other than the demonstrative that's at issue, I

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1 would object.

2 MS. WALBURN: Your Honor, this exhibit was
3 admitted in its entirety some weeks ago.

4 MR. WEBER: I hope the court will remember
5 some time ago we had a discussion about this exhibit,
6 and a motion was filed. I know that's still in front
7 of the court. So that's all I'm raising. Because I
8 think this deals with one of the documents that I did
9 not think had been admitted that was part of the
10 expert report.

11 THE COURT: Counsel.

12 MS. WALBURN: Again, Your Honor, this was
13 admitted. I believe this had been previously
14 addressed and ruled on by the court. And for
15 counsel's information, this is the only line in this
16 exhibit we're using at this time.

17 THE COURT: Okay.

18 MS. WALBURN: Also, we would offer it
19 subject to further proof. The author of this report,
20 Paul Much, will be testifying later this week.

21 THE COURT: You're just going to use one
22 line?

23 MS. WALBURN: Yes, Your Honor, the line
24 that's on the screen right now on advertising,
25 marketing and promotion expenditures in '92 and '93.

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1 THE COURT: All right. I don't recall that
2 the court allowed the entire exhibit. It did allow
3 the three demonstratives. I could be wrong, you can
4 correct me, but I don't recall there being a
5 subsequent offer. My review of the record originally
6 was that there were three exhibits introduced and
7 they were the three demonstratives, and that's all
8 that -- I believe that's all that was introduced at
9 the time. And they were received as the three
10 demonstratives. Then there was an issue raised by
11 defense with regard to the entire exhibit, and the
12 court's position was it wasn't going to rule on that
13 until Much testified.

14 MR. WEBER: Your Honor, I --

15 THE COURT: Now did I miss something in
16 between?

17 MS. WALBURN: My memory could be faulty,
18 Your Honor. My recollection was the entire exhibit
19 was offered and admitted, but only three
20 demonstratives were used at that time.

21 THE COURT: That's not what I recall in
22 reviewing the transcript.

23 MR. WEBER: Your Honor --

24 THE COURT: I could be wrong, but --
25 Yes.

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1 MR. WEBER: I'm sorry if I --

2 THE COURT: Go ahead.

3 MR. WEBER: -- spoke over you.

4 If this can move things along here, I think Your
5 Honor's recollection on this is quite precise. If
6 all they're going to use is that one line, or they're
7 just going to ask one question, and if under Rule
8 10 -- I forgot the number right now, that they're
9 going to bring Mr. Much in to tie this up later,
10 maybe we can just go ahead on the basis of the
11 continued admissibility of Mr. Much, as long as it's
12 very narrow right now.

13 THE COURT: Okay. You are representing Mr.
14 Much will testify.

15 MS. WALBURN: Yes, he will.

16 THE COURT: And he will testify concerning
17 this particular exhibit --

18 MS. WALBURN: Yes, under --

19 THE COURT: -- for purposes of introducing
20 the exhibit.

21 MS. WALBURN: Yes. Under Rule 1006, Your
22 Honor.

23 THE COURT: All right. I'll allow it, and
24 I'll allow a motion to strike if that doesn't occur.

25 MR. WEBER: Thank you, Your Honor.

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1 THE COURT: Okay.

2 BY MS. WALBURN:
3 Q. Looking at the advertising and promotion
4 expenditures for Philip Morris between the years 1992
5 and 1993, can you tell us what happened the those
6 expenditures in those years?
7 A. Yes. In 1992 they were 1.8 billion dollars, and
8 in 1993 they were 2.8 billion dollars, so they
9 increased their advertising, marketing and promotion
10 budget by one billion dollars.
11 Q. Professor Perry, can we turn to another tobacco
12 company, Brown & Williamson. Where does Brown &
13 Williamson rank in the U.S. market in terms of share
14 of market?
15 A. It's number three.
16 Q. Would you turn to Exhibit 11462 in book one.
17 This is a Brown & Williamson document dated February
18 21st, 1973, from R. L. Johnson to R. A. Pittman,
19 executive vice-president.
20 Is this a document which you have reviewed in
21 this litigation?
22 A. Yes, it is.
23 Q. Does it form part of the basis of your opinions?
24 A. Yes, it does.
25 MS. WALBURN: Your Honor, we would offer
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1 Exhibit 11462.
2 MR. WEBER: No objection, Your Honor.
3 THE COURT: Court will receive 11462.
4 BY MS. WALBURN:
5 Q. And is this document discussing the Kool
6 cigarette?
7 A. Yes, it is, it's discussing what -- how Kool is
8 doing in the market.
9 Q. And who manufactures Kool?
10 A. Brown & Williamson.
11 Q. Would you turn to the last paragraph on the
12 first page of this document. This states, "Kool has
13 shown little or no growth in share of users in the
14 26-age group. Growth is from 16- to 25-year-olds.
15 At the present rate, a smoker in the 16 to 25 year
16 age group will soon be three times as important to
17 Kool as a prospect in any other broad age category."
18 And then turning to the next page, paragraph
19 three -- page three -- the document states, "Kool's
20 stake in the 16- to 25-year-old population segment is
21 such that the value of this audience should be
22 accurately weighted and reflected in current media
23 programs. As a result, all magazines will be
24 reviewed to see how efficiently they reach this group
25 and other groups as well."
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1 What's the significance of this document,
2 Professor Perry?
3 A. Brown & Williamson is seeing how well they're
4 doing with Kool in the 16- to 25-year-old age group.
5 That's where they're doing the best, and so they are
6 reviewing their advertising and promotional programs

7 to make sure that they efficiently, as they say,
8 reach this group 16 to 25.
9 Q. Would you turn in book two to Exhibit 13679.
10 This document has been previously admitted, it's
11 dated September 10th, 1975, two years after the
12 document we just reviewed. It's from the Ted Bates
13 new york/advertising agency to Mr. M. O. Willson,
14 brand manager at Brown & Williamson, and it's titled
15 "KOOL, Analysis of Brand Switching Study."
16 Can you generally describe this document,
17 Professor Perry.
18 A. Yes. This is an advertising agency for Brown &
19 Williamson, and they're discussing how well Kool is
20 doing.
21 Q. And would you turn to page four of the document,
22 Bates number 6816, under "CONCLUSIONS" in paragraph
23 number one the document states, "Kool's effort
24 against the 16 to 25 age group continues to be
25 working."

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1 What's the significance of that statement?
2 A. Well this is written after the last document we
3 looked at, and so the ad agency is telling Brown &
4 Williamson that their efforts, advertising and
5 promotional efforts are working, meaning there are
6 more smokers in that age group, the 16 to 25 age
7 group.
8 Q. Would you turn in this volume to Exhibit 13438.
9 This is a document dated September 16th, 1983 from H.
10 T. Hughes at Brown & Williamson to a Mr. P. R. Hill
11 at British-American Tobacco Company Ltd., which is
12 the corporate affiliate of Brown & Williamson in
13 England.
14 Is this a document which you have reviewed in
15 this case?
16 A. Yes, I have.
17 Q. And does it form part of the basis of your
18 opinions?
19 A. Yes, it does.
20 MS. WALBURN: Your Honor, we would offer
21 Exhibit 13438.
22 MR. WEBER: No objection, Your Honor.
23 THE COURT: Court will receive 13438.
24 BY MS. WALBURN:
25 Q. And can you generally describe this document.

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1 A. Yes. This is a document from Brown & Williamson
2 to the British-American Tobacco Company in London,
3 and it's a -- they filled out a survey about the U.S.
4 cigarette market, so this is the cover letter and the
5 survey that they filled out for British-American
6 Tobacco Company.
7 Q. And would you turn to the next page, Bates
8 number 3011. And it's -- on this page the document
9 states "TOTAL POPULATION: SECTION C.1."
10 "Please write in the box below your definition
11 of 'Adult' for Section C.1." And what is the

12 definition of adult that Brown & Williamson provides
13 to BATCo?
14 A. Well consistent with the other Brown &
15 Williamson documents, they define an adult as 16 and
16 older.
17 Q. Would you turn in book one to Exhibit 11279.
18 This is a 1985 document produced by BATCo Ltd. in
19 this litigation entitled "THE CURRENT GROUP R&D
20 PROJECT." Is this a document you have reviewed in
21 this case?
22 A. Yes, it is.
23 Q. And does it form part of the basis of your
24 opinions?
25 A. Yes, it does.

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1 MS. WALBURN: Your Honor, we would offer
2 Exhibit 11279.
3 MR. WEBER: No objection, Your Honor.
4 THE COURT: Court will receive 11279.
5 BY MS. WALBURN:
6 Q. And turning in this document to Bates number
7 0536, the document states, "BAT: GENERAL MARKETING
8 POLICIES.
9 "ANTI-MARLBORO
10 "Marlboro is the single biggest threat to BAT's
11 number one position. No one brand can destroy
12 Marlboro.
13 "Overall BAT strategy will be market specific
14 and multi-brand, but within each market major effort
15 behind one brand aimed at starters/young adults."
16 What's the significance of that statement?
17 A. Well the significance is -- is that for -- for
18 B.A.T, they also see Marlboro as a competitor and
19 they also planned to have a major effort, have a
20 major brand in each of their markets that's aimed at
21 starters, and starters are primarily under age 18.
22 Q. Can we turn to another tobacco company, the
23 Lorillard Tobacco Company. And in book number one,
24 Exhibit 10195. This document was previously
25 admitted, it's dated August 30th, 1978, it's to Mr.

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1 Curtis Judge, the president of Lorillard, from T. L.
2 Achey, Field 3. And looking at the third paragraph
3 on that page, the document states, "The success of
4 Newport has been fantastic during the past few years.
5 Our profile taken locally shows this brand being
6 purchased by black people, paren, (all ages), young
7 adults, paren, (usually college age), but the base of
8 our business is the high school student."
9 Does this document appear to be reporting on one
10 geographic area?
11 A. Yes, Field 3, which appears to be somewhere near
12 New Jersey. East Coast.
13 Q. Are you aware from your research and information
14 in the public domain about how Newport has sold among
15 under-age youths nationwide?
16 A. Yes, it's been the number two or number three

17 brand for the past decade at least.
18 Q. Could you turn to book two, Exhibit 17953, and
19 its companion document, 24304. Exhibit 17953 is an
20 August 11th, 1981 Lorillard document from Tom H. Mau,
21 senior vice-president of advertising, to a group of
22 people including Mr. M. H. Burke, group brand
23 director, Ms. M. A. Capra, director of marketing and
24 development, Mr. J. E. Daghljan, group brand manager,
25 and Mr. J. G. Flinn, director of marketing research.

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1 And the attachment, Exhibit 24304, is titled "REPLIES
2 TO 5-YEAR PLAN QUESTIONNAIRE."

3 Are these documents which you have reviewed in
4 this litigation?

5 A. Yes, they are.

6 Q. And do they form part of the basis of your
7 opinions?

8 A. Yes, they do.

9 MS. WALBURN: Your Honor, we would offer
10 Exhibits 17953 and 24304.

11 MR. WEBER: No objection, Your Honor.

12 THE COURT: Court will receive 175 -- 17953
13 and 24304.

14 BY MS. WALBURN:

15 Q. Looking first at the cover memo, Exhibit 17953,
16 and the subject is "REPLIES TO 5-YEAR PLAN
17 QUESTIONNAIRE." Then if you turn to the actual
18 reply, which is the next exhibit, 24304, and would
19 you turn in this document to page 27 or Bates number
20 1030. The first paragraph states, "The easiest is to
21 keep riding with Newport. However, I think we must
22 continually keep in mind that Newport is being
23 heavily supported by blacks and the under 18 smokers.
24 We are on somewhat thin ice should either of these
25 two groups decide to shift their smoking habits."

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1 What is the significance of that statement?

2 A. Well the significance of it is that Lorillard
3 realizes that -- that their success rides on Newport,
4 and the success of Newport is with the under-age --
5 under 18 age -- age group as well as blacks.

6 Q. Professor Perry, have you reviewed other
7 documents in this litigation in addition to the ones
8 you have testified about today?

9 A. Yes, I've reviewed hundreds of documents and
10 thousands of advertisements.

11 Q. Based on your education, training, experience
12 and expertise in the field of youth smoking, do you
13 have an opinion to a reasonable degree of scientific
14 certainty as to whether the majority of starting
15 smokers are youth under age 18?

16 A. Yes. The majority of starting smokers are youth
17 under age 18.

18 Q. Based on your education, training, experience
19 and expertise in the field of youth smoking and your
20 review of tobacco company documents in this
21 litigation, do you have an opinion to a reasonable

22 degree of scientific certainty as to whether the
23 defendants knew that the majority of starting smokers
24 are youth under age 18?

25 A. Yes. The tobacco companies, the defendants,
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1 knew that the majority of starting smokers are youth
2 under age 18.

3 Q. And based on your education, training,
4 experience and expertise in the field of youth
5 smoking, do you have an opinion to a reasonable
6 degree of scientific certainty as to whether youth
7 are capable of making an informed choice about
8 smoking?

9 A. Youth are not able to make an informed choice
10 about smoking.

11 Q. Based on your education, training, experience
12 and expertise, and your review of internal tobacco
13 company documents in this case, do you have an
14 opinion to a reasonable degree of scientific
15 certainty as to whether defendants marketed

16 cigarettes to youths, including youth under age 18?

17 A. Yes, the defendants definitely marketed to youth
18 and youth under age 18.

19 Q. And finally, based on your education, training,
20 experience and expertise and your review of internal
21 tobacco company documents, do you have an opinion to
22 a reasonable degree of scientific certainty as to
23 whether defendants' conduct has been a substantial
24 factor in causing young persons, including youth
25 under age 18, to smoke?

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1 A. Yes. The defendants' conduct has been a
2 substantial contribution in causing young people to
3 smoke.

4 MS. WALBURN: Thank you. I have no further
5 questions.

6 THE COURT: Well I think we'll recess at
7 this time, reconvene tomorrow morning at 9:30.

8 THE CLERK: Court stands in recess, to
9 reconvene tomorrow morning at 9:30.

10 (Recess taken.)
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